DECISIONS & OPINIONS

R. R. & W. COM'S.

ILLINOIS, 1900 - 1907

DECISIONS AND OPINIONS

OF THE

Railroad and Warehouse Commission

OF THE

STATE OF ILLINOIS

Volume II

AND

Various Opinions of the Attorney General Relating to Matters in this Department 1900 to 1907.

Compiled by
WILLIAM KILPATRICK,
Secretary.

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ORDERS AND OPINIONS.

The following orders and opinions have been rendered by the Commission:

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

Illinois Transfer Railroad Company,

vs.

Louisville, Evansville & St. Louis Consolidated Railroad Company.

Petition to Cross at Grade, Etc., at Webber Street in Winstanley Park, St. Clair County, Illinois.

APPEARANCES:

For Petitioner, J. M. HAMILL.
For Respondent, W. L. TAYLOR, J. D. WELLMAN, E. C. KRAMER.

Opinion by LINDLY, Chairman.

This is a petition filed on behalf of the Illinois Transfer Railroad company to cross the tracks of the Louisville, Evansville & St. Louis Consolidated Railroad company in Winstanley Park, a short distance east of the city limits of East St. Louis in St. Clair county, Ill.

The petition was filed Nov. 15, 1899.

The hearing of this petition was set for Tuesday, Dec. 19, 1899, when it was continued on motion of the respondent until Friday, Jan. 12, 1900, at which time the case was partially heard, and continued by agreement to Friday, Jan. 26, 1900, at which time the trial was concluded.

The evidence in this case shows that the proposed line of the petitioner would cross the main track and side track of the Louisville, Evansville & St. Louis Consolidated railroad at the place where the main track of the Louisville, Evansville & St. Louis Consolidated railroad is located upon Survey One Hundred Twenty-six (126) of the common fields of Cahokia, in the village of Winstanley Park, in St. Clair county, Illinois; the center lines of the two proposed tracks of the said Illinois Transfer Railroad to be laid across the main track and side track of the Louisville, Evansville & St. Louis Consolidated railroad at grade, being respectively six and one-half (6½) feet on each side of the northeasterly prolongation of the center line of Pueblo street, as established through the sub-division of Denverside, in Centerville Station township, St. Clair county, Illinois, (as said street is shown and des-

ignated in Plat Book F, page 40 of the records of St. Clair county, Illinois), if said Pueblo street were extended across the right of way of the said Louisville, Evansville & St. Louis Consolidated railroad. The description of said proposed crossing being more particularly described on a certain plat introduced in evidence marked Exhibit "A," which plat is made a part of this order.

The evidence further shows that the Illinois Transfer Railroad company is a railroad corporation, incorporated and organized under the laws of the State of Illinois for the purpose of building, maintaining and operating a belt or connecting railway, with a single or double track to connect with all of the railroads running from the east, north or south through Madison or St. Clair counties, in the State of Illinois, as described in said petition.

It further appears from the evidence in this case that the said Illinois Transfer Railroad company will cross with their tracks the tracks of the Vandalia railroad, the Baltimore & Ohio Southwestern railroad, the St. Louis & O'Fallon railroad and the Louisville & Nashville railroad.

It further appears from the testimony that the said Illinois Transfer Railroad company has by agreement with the various roads aforesaid obtained the written consent of said roads to cross the tracks of the same at grade and make proper connections with the main tracks of said roads for the purpose of operating a belt railroad.

It is contended by respondent that another corporation pretending to be incorporated and organized under the laws of the State of Illinois for the purpose of building a track upon the route described in said petition and prior to the time of the incorporation of the Illinois Transfer Railroad company had already laid down a single track on part of the route described and set forth in petitioner's petition.

It appears from the testimony in this case that prior to the incorporation of the said Illinois Transfer Railroad company, that there was incorporated a railroad company under the name of the East St. Louis Belt Railroad company, and that they had acquired certain right of way and constructed a portion of the track on the right of way acquired under this title. It further appears that said railroad had not been completed or operated by the said East St. Louis Belt Railroad company, but had been partially graded and constructed.

It appears from the testimony that the said Illinois Transfer Railroad company, after its said incorporation, acquired all the rights, franchises and property of the said East St. Louis Belt Railroad company, and was at the time of the filing of the petition in this case, the sole owner of the right of way, franchises and property of the said East St. Louis Belt Railroad company, and had full right to file the petition herein; and the contention of respondent that this was the acquiring or consolidation of parallel lines of railroad as set forth in the statutes of the State of Illinois is not supported either by the testimony or under the law, for it simply amounted to acquiring by the Illinois Transfer Railroad company of the property and franchises of the East St. Louis Belt railroad, which at the time of such acquirement was neither constructed nor in operation, and the rule as to the parallel lines of railroads, contended for by respondent, has no application whatever under the facts in this case; and the right of the Illinois Transfer Railroad company to acquire from the East St. Louis Belt Railroad company their right of way, franchises, etc., can not be denied under the law.

It further appears from the testimony that the original right of way of the said Louisville, Evansville & St. Louis Consolidated Railroad company at the point of the proposed crossing is one hundred and ten (110) feet wide. It is only shown upon the map introduced in evidence to be one hundred (100) feet wide, but according to the evidence it appears to be one hundred and ten (110) feet wide at that point. Under the statute providing for the crossing of one railroad with another, it is provided under "An Act in relation to the crossing of one railroad by another, and to prevent danger to life and to property from grade crossings," approved May 27, 1889; in force July 1, 1889, Section 205: "That hereafter any railroad company desiring to cross with its tracks the main line of another railroad company, shall construct the

crossing in such manner and at such place as will not necessarily impede or endanger the travel or transportation upon the railway crossed; if in any case objection be made to the place or mode of crossing proposed by the company desiring the same, either party may apply to the Board of Railroad and Warehouse Commissioners, and it shall be their duty to view the ground, and give all parties interested an opportunity to be heard; after full investigation and with due regard to safety of life and property, said board shall give a decision prescribing the place where and the manner in which said crossing shall be made, but in all cases the compensation to be paid for property actually required for the crossing, and all damages resulting therefrom, shall be determined in the manner provided by law in case the parties fail to agree."

It appears from the evidence in this case that in March, 1899, under certain proceedings in the United States Circuit Court, had by the receiver of the said respondent railroad company, he was authorized to purchase a certain strip of ground two hundred (200) feet wide part of the distance and two hundred and eighty (280) feet wide at another portion, being at the point in question, and three hundred (300) feet at another point, with a total length of five thousand six hundred and twenty-eight (5,628) feet lying along the side of and adjacent to the right of way of the main line of said Louisville, Evansville & St. Louis Consolidated Railroad company at the point of the proposed crossing, which said right of way of said main line at the point of said proposed crossing is one hundred and ten (110) feet, making a total width at said proposed point of crossing of three hundred and ninety (390) feet.

At the time the petition in this case was filed and at the time the crossing was viewed by the Railroad and Warehouse Commission three (3) or more certain tracks had been laid upon ties, without any grading or surfacing of the same, upon the strip of ground so purchased as aforesaid, which tracks are totally disconnected at either end with the main or side track of the said Louisville, Evansville & St. Louis Consolidated Railroad at the point of said crossing, or at any point whatever. It is insisted that it is the intention of the respondent railroad company to use the strip of ground so purchased for yard purposes, and that, in passing upon the question of the crossing of the tracks of the Illinois Transfer Railroad company over the tracks of the respondent railroad company, that the commission should take into consideration said tracks so laid upon said strip of ground, and also the additional fact that it is intended to use said strip of ground and said tracks so laid upon said strip of ground for yard purposes.

The inquiry of the commission under the statute is limited to the crossing of the main line of one railroad company with another, and does not extend beyond the original right of way or main track and connecting tracks at the time said petition was filed. The commission cannot enter into the field of the probable intention of respondent as to the use they desire or propose to make of the strip of ground in question. The damages arising to the respondent railroad company from the crossing of the main track and side track, as well as the crossing of the other tracks on the strip of ground in question, are questions that will have to be settled under the Eminent Domain Act, which this commission cannot consider. Under this statute the commission is only to determine the place and mode of crossing, and all questions of damages are to be determined under proper condemnation proceedings. It is no doubt true, that if the respondent railroad company was operating a yard at the point in question, that the commission would consider the number of tracks and yard in question in passing on the question of a grade or overhead crossing, so far as it affected safety to life and property, and so far as it would necessarily impede and endanger the travel or transportation upon the railway so crossed, but for the commission to enter into any future use that is proposed to be made of the property in question would not be proper under the law, for the reason that the respondent railroad company could change its intention at any moment and abandon the proposed use of the property in question. The commission must deal with the status of the property as it exists at the time the petition was filed and the hearing had.

The object and purposes of the building of the road in question, the Illinois Transfer Railroad company, is to furnish terminal facilities for the various roads entering the city of East St. Louis, and also, as appears from the evidence, to furnish shipping facilities to large industries situated along the line of the proposed route of the road in question. In order that the object and purposes of this road may be carried out, and these facilities furnished, it is necessary that they be allowed to unite and connect with the roads which they cross. Under the statute of this State it becomes the duty of the Railroad and Warehouse Commission to permit one railroad crossing another to unite and connect its tracks with such roads so crossed, in order that shipping facilities may be furnished to each of the said roads. In this case, by agreement, the principal trunk lines entering the city of East St. Louis crossed by this road, with the exception of the respondent company, agreed with the terminal road in question for the crossing of their said tracks at grades, and the uniting and connecting of the same in order that terminal facilities may be furnished by the Illinois Transfer Railroad Company.

It is contended that because the respondent railroad company is operating a belt or terminal railway, that such fact ought to be taken into consideration in passing upon the question of the proposed crossing. And it is further insisted that the present terminal facilities furnished by the respondent railroad company are sufficient and ample. It is sufficient to say that it is the object and purpose of the law to give the best opportunity and facilities for railway shipment. That has been the policy pursued by the State of Illinois for years. To hold otherwise would be to say that no competing lines could be built and no additional terminal facilities could be added in the city of East St. Louis. We cannot so hold and the law cannot be so construed.

It is further contended that the place of crossing should be changed and carried to the east end of the property acquired by the respondent railroad company, which would cause the road in question to build and acquire the right of way two miles distant. This only could be urged by a competing line, and cannot be considered reasonable under the evidence in the case.

It is also urged that it might be well for this road to run at the west end of the strip of ground acquired by the respondent railroad company, but it is in evidence that if such change should be made by the commission, that it would destroy all connecting facilities with the Shickle-Harrison-Howard Iron Company, which is the largest manufacturing establishment on the line of road in question. It does not come within the province of this commission to make changes in the proposed location of a crossing, the effect of which would be to destroy connections with manufacturing establishments which desire terminal facilities simply for the convenience of a competing line that seeks to destroy the building of a road which proposes to furnish facilities equal to theirs.

We cannot but repeat what we said in a former decision, that there can be no question "but that all grade crossings of railroads or of highways are in the main dangerous, and should be avoided whenever it is practicable and possible to do so without placing too great a burden upon the company constructing the same. We believe that the policy of this commission should be to order overhead crossings whenever it is possible and practicable to do so."

Or, in another case, where we said: "That it is and will be the policy of this commission to order overhead or under crossings wherever and whenever it is possible to do so, believing as we do that the advanced thought and system of railroad building demands it, and that the increased speed of trains and the safety of life and property require it."

And we still insist that private inconvenience and cost must yield to public necessity.

But in this case there is a material difference between the cases referred to and the case at bar. The road seeking to cross in this case is a belt line carrying no passengers, and being built for the purpose only of connection with the main arteries of traffic entering the city of East St. Louis, carrying no passengers and doing a freight business only. Their trains are run at all times under control, and we believe, as we have insisted from the origin of this commission, that in cities overhead crossings are not only expensive to

the road crossing, but are destructive of the value of property abutting the same, and inconvenience, in this case particularly, to the manufacturing industries situated along the line. It can not therefore be urged that this commission is in any way deviating or abandoning the policy set forth in former decisions, in saying, that this belt road constructed for the purpose of carrying freight only, shall go at grade in this particular case.

DECISION.

It is therefore ordered and decreed that the petitioner, the Illinois Transfer Railroad Company, have leave and it is hereby empowered and ordered to cross with its tracks the main line and track and connecting track of the Louisville, Evansville & St. Louis Consolidated Railroad Company at grade, and connect and unite their tracks with the same, at a point described and set forth in this decision, and as marked and designated on the plat attached hereto and made a part of this decision, marked Exhibit "A."

(Plat referred to herein on file in office.)

It is further ordered that the petitioning road interlock the crossing at the above named point with an interlocking system, in accordance with the requirements of the Board of Railroad and Warehouse Commissioners of the State of Illinois, and that the cost of construction and future maintenance thereof shall be paid by the petitioning road, and that the operating expenses shall be divided between the roads as follows:

The road seeking to cross, viz: The Illinois Transfer Railroad Company shall pay three-fourths (¾) of the operating expenses and the Louisville, Evansville & St. Louis Consolidated Railroad Company one-fourth (¼).

Dated at Springfield, Ill., this 6th day of February, A. D. 1899.

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

Baltimore & Ohio Southwestern Railway Company

vs.

Jacksonville & St. Louis Railway Company.

Petition for protection of crossing at Shattuc, Illinois.

APPEARANCES:

R. E. HAMIL, for Petitioner.
C. M. STANTON, for Respondent.

The Baltimore & Ohio Southwestern Railway Company filed a petition with the Railroad and Warehouse Commission of Illinois, setting forth that they were the owners of a line operated and extending from East St. Louis in the State of Illinois, to a point on the Wabash river, opposite the city of Vincennes, Indiana; that the main track of said line crosses at grade the main track of the Jacksonville & St. Louis Railway Company at Shattuc, in the county of Clinton, in the State of Illinois; that said Baltimore & Ohio Southwestern Railway Company, the petitioner herein, desires to unite with said Jacksonville & St. Louis Railway Company in protecting said crossing with proper devices and appliances, thus securing greater safety to persons and property and enabling trains to pass said crossing without stopping.

The petition further sets forth that said Baltimore & Ohio Southwestern Railway company could not agree with the said Jacksonville & St. Louis Railway company upon a plan for protecting said crossing. The petition further sets forth that the public good requires that said crossing be protected; and filed with the commission plats showing the location of the tracks involved in said crossing, and made said plats part of its petition herein.

The petitioner prays that the commission give notice to the said Jacksonville & St. Louis Railway company of the filing of said petition, ask the commission to view the site of said crossing, and also to appoint a time and place for the hearing of said petition, and praying that the commission enter an order prescribing a proper device and machinery for the proper protection of said crossing, in pursuance of the act of the General Assembly, approved June 2, 1891. The petitioner further prays that the commission will in said order fix the proportion of the cost of construction, operation and maintenance of said device that each of the parties herein shall pay.

Notice of the filing of said petition by said Baltimore & Ohio Southwestern Railway company was properly given to the said respondent, the Jacksonville & St. Louis Railway company, and they acknowledged service; the commission viewed the site of the crossing as required by statute, and fixed a time and place for the hearing of said petition, the same being at the office of the commission at Springfield on the 2d day of January, which said date was afterwards changed to the 3d day of January, A. D. 1900.

The Jacksonville & St. Louis Railway company filed an answer to said petition asking that an interlocker be not granted, for reasons set forth in the answer, also correspondence between the said Baltimore & Ohio Southwestern Railway company and the said Jacksonville & St. Louis Railway company relative to said crossing.

FINDINGS.

The commission after hearing the evidence in the case and the arguments of counsel find:

That the crossing is of such a character as to demand an interlocking system for the protection of life and property; and that an interlocking system should be constructed, maintained and operated at the said crossing of the Baltimore & Ohio Southwestern Railway company and Jacksonville & St. Louis Railway company at Shattuc, Ill.

ORDER.

It is therefore ordered that the said railway companies forthwith proceed to protect said crossing at Shattuc, Ill., by an interlocking system, to be approved according to the statute by the Railroad and Warehouse Commission; that the same be constructed under the supervision of the consulting engineer of said Railroad and Warehouse Commission of Illinois.

It is further ordered by the commission that each of said companies shall pay such proportion of the cost of constructing, erecting and maintaing the said interlocking system and all thereto appertaining as the number of levers that shall operate the switches and signals and other parts of said interlocking system in and for the respective tracks of each of said companies shall bear to the whole number of levers required in said interlocking system, and each of said companies shall pay one-half (½) of the cost of operating the said interlocking system.

It is further ordered that should either of the companies aforesaid desire to add to the number of levers used in the interlocking devices for their own benefit, that said companies desiring the addition of such levers shall pay the entire cost of such addition, when properly approved by the railroad commission of the State of Illinois.

Dated at Springfield this 3d day of July, A. D., 1900.

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

Chicago & Alton Railroad Company,

vs.

Terre Haute & Indianapolis Railroad Company and V. T. Malott, Receiver,

Protection of crossing at Minier.

APPEARANCES:

For Petitioner, WM. BROWN,
For Respondent, T. J. GOLDEN,

Opinion by LINDLY, Chairman.

This case was brought before the commission by a petition presented by the Chicago & Alton Railroad company, asking that the grade crossing at Minier in Tazewell county, Ill., where the main track of the Chicago & Alton Railroad company crosses the main track of the Terre Haute & Indianapolis Railroad Company, be protected by proper interlocking device and machinery for the protection of the crossing, according to the general laws of the State of Illinois.

The petition was properly filed setting forth the facts in the case, asking that the commission notify the said respondent, the Terre Haute & Indianapolis Railroad company; that they proceed to view the site of said crossing and appoint a time and place for the hearing of the petition, and that thereupon they make a proper order in said matter, apportioning the cost of the construction, operation and maintenance of said plant at this place.

Notice was duly given to the Terre Haute & Indianapolis Railroad company of the filing of the petitions by the said Chicago & Alton Railway company, notified the parties of the date fixed by the commission for the viewing of the crossing and the time and place of the hearing of said petition. In accordance with said notice the commission viewed the site of said crossing on the 20th day of June, A. D. 1900, and the case was heard at the office of the commission in Springfield, Ill., on the 3d day of July, A. D. 1900, all of the commissioners being present.

Upon such hearing statements were made by the said petitioner and respondent herein, by their respective counsel, and the facts as existed were agreed upon and submitted to the commission without further evidence.

FINDINGS.

The commission having taken under advisement the facts as agreed upon by the respective parties hereto, find:

That the crossing of said companies at Minier, Ill., is dangerous and should be protected by an interlocking system.

ORDER.

It is therefore ordered by the commission that companies, the Chicago & Alton Railway company and the Terre Haute & Indianapolis Railroad company forthwith proceed to protect said crossing at Minier, Ill., by an interlocking system, to be approved by the Railroad and Warehouse Commission of the State of Illinois.

It is further ordered by the commission that each of said companies shall pay such proportion of the cost of constructing, erecting and maintaining the said interlocking system and all thereto appertaining as the number of levers that shall operate switches, signals and other parts of said interlocking system in and for the respective tracks of each of said companies shall bear to the whole number of levers required in said interlocking system, and each of said companies shall pay one-half (½) of the cost of operating the said interlocking system.

It is further ordered that should either of the companies aforesaid desire to add to the number of levers used in the interlocking device for their own benefit, that said companies desiring the addition of such levers shall pay the entire cost of such addition, when properly approved by the Railroad and Warehouse Commission of the State of Illinois.

Dated at Springfield, Ill., this 3d day of July, A. D. 1900.

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

Chicago & Alton Railroad Company,

vs.

Terre Haute & Indianapolis Railroad Company, and V. T. Malott, Receiver.

Protection of Crossing at Atlanta.

APPEARANCES:

WM. BROWN, for Petitioner.
T. J. GOLDEN, for Respondent.

Opinion by LINDLY, Chairman.

The Chicago & Alton Railroad Company filed a petition with the Railroad and Warehouse Commission of Illinois setting forth the fact that they were a corporation doing business in Illinois, and that their track crossed at grade the track of the Terre Haute & Indianapolis Railroad Company at Atlanta, Logan county, Ill.; that the petitioner, the said Chicago & Alton Railway company desired to unite with the said Terre Haute & Indianapolis Railroad company in protecting said crossing with proper devices and appliances, thus securing greater safety to persons and property, and enabling trains to pass said crossing without stopping, but that they were unable to agree with the Terre Haute & Indianapolis Railroad company upon a plan of the same, and that the public good required that said crossing be so protected; and asked that notice be given to said Terre Haute & Indianapolis Railroad company, and filed with the said petition plats showing the location of said tracks, and further prayed that the commission view the site of said crossing, fix a time and place for the hearing of said petition, and enter proper orders for the erection of an interlocking system at this point and apportion the cost of the construction, operation and maintenance of the same that each of the parties hereto shall pay.

In accordance with the prayer of said petition the proper notice was given to said respondents and the crossing was viewed by the commission on the 20th day of June, A. D. 1900, and the case set for trial on the 3d day of July, A. D. 1900, at which time the evidence was heard, as was also the arguments of the counsel for the respective parties.

FINDINGS.

Thereupon after due consideration the commission find: That an interlocking system is necessary for greater safety to persons and property at said point.

ORDER.

It is therefore ordered that an interlocking system be constructed, maintained and operated at said crossing of the Chicago & Alton Railway company and the Terre Haute & Indianapolis Railroad company at Atlanta, in Logan county, in the State of Illinois; and that said companies proceed to protect said crossing at Atlanta, Ill., by an interlocking system to be approved according to the statute by the railroad commission of said State.

It is further ordered by the commission that each of said companies shall pay such proportion of the cost of construction, erecting and maintaining the said interlocking system and all thereto appertaining as the number of levers that shall operate the switches and signals and other parts of said interlocking system in and for the respective tracks of each of said companies shall bear to the whole number of levers required in said interlocking system, and each of said companies shall pay one-half (½) of the cost of operating the said interlocking system.

It is further ordered that should either of the companies aforesaid desire to add to the number of levers used in the interlocking device for their own benefit, that said company desiring the addition of such levers, shall pay the entire cost of such addition, when properly approved by the railroad commission of the State of Illinois.

Dated at Springfield, Ill., this 3rd day of July, A. D., 1900.

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

Chicago & Alton Railway Company

vs.

Illinois Central Railroad Company.

Petition for protection of crossing at Mason City.

APPEARANCES:

For Petitioner, WM. BROWN.
For Respondent, JOHN G. DRENNAN.

Opinion by LINDLY, Chairman.

The Chicago & Alton Railway company having failed to secure an agreement with the Illinois Central Railroad company, as to the construction of a proper interlocking device, where the main track of the Chicago & Alton Railway crosses the main track of the Illinois Central, at Mason City, in Mason county, Illinois, they filed a petition asking the commission to make proper orders in the case.

The commission viewed the crossing, and when the case was set for trial the parties agreed that the board should enter an order for an interlocker at that place; the board apportioning the cost between the railroads as they saw fit and proper.

ORDER.

It is therefore ordered and decreed by the Railroad and Warehouse Commission of the State of Illinois, that an interlocking plant be constructed in accordance with the laws of the State, and the rules of said Railroad and Warehouse Commission, under the supervision of the consulting engineer of said commission, and that the costs of the construction and maintenance of said plant be divided between the Chicago & Alton Railway Company and the Illinois Central Railroad Company, on the basis of the number of levers necessary to control the switches, derails and signals in or adjoining the tracks of each company respectively, and that the expenses of operation of said plant be divided half and half between the two said companies.

It is further ordered that should either of the companies aforesaid desire to add to the number of levers used in the interlocking device, for their own benefit, that said company desiring the addition of said levers, shall pay the entire cost of such addition, when properly approved by said commission.

Dated at Springfield, this 12th day of December, 1900.

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

Chicago & Alton Railway Company

vs.

Illinois Central Railroad Company.

Protection of Crossing at Lincoln.

APPEARANCES:

WM. BROWN, for Petitioner.
JOHN G. DRENNAN, for Respondent.

Opinion by LINDLY, Chairman.

The Chicago & Alton Railway Co. filed with the Railroad and Warehouse Commissioners, a petition setting forth the fact that the main track of said railroad crossed at grade the main track of the Illinois Central Railroad Co., at Lincoln, Logan county, Illinois, and that the petitioner desires to unite with the said Illinois Central Railroad Co., in protecting said crossing with proper devices and appliances, thus securing greater safety to persons and property, and enabling trains to pass said crossing without stopping, but that they were unable to agree with the said Illinois Central Railroad Co. upon a plan for the same, and therefore they petitioned the commission to give notice to the said Illinois Central Railroad Company to view the site of said crossing, and appoint a time and place for hearing of the petition asking that a proper order prescribing a proper device and machinery for the protection of said crossing be made.

The commissioners viewed the crossing and set the case for hearing, at which time and place the parties agreed that an order should be entered by the railroad commissioners, apportioning the costs of construction, maintenance and operation.

ORDER.

It is therefore ordered and decreed by the Railroad and Warehouse Commission of the State of Illinois, that an interlocking plant be constructed in accordance with the laws of the State, and the rules of said Railroad and Warehouse Commission, under the supervision of the consulting engineer of said commission, and that the costs of the construction and maintenance of said plant be divided between the Chicago & Alton Railway Co. and the Illinois Central Railroad Co. on the basis of the number of levers necessary to control the switches, derails and signals, in or adjoining the tracks of each company respectively, and that the expenses of operation of said plant be divided half and half betweeen the two said companies.

It is further ordered that should either of the companies aforesaid desire to add to the number of levers used in the interlocking device for their own benefit, that said company desiring the addition of said levers, shall pay the entire cost of such addition, when properly approved by said commission.

Dated at Springfield this 12th day of December, 1900.

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

The People of the State of Illinois on Relation of Siegel Copel, State's Attorney of Saline County, Illinois.

vs.

Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

Debt.

Opinion by LINDLY, Chairman.

And now come Siegel Copel, State's attorney of Saline county, and Choisser, Whitley & Choisser, attorneys for the relator, and also comes the Cleveland, Cincinnati, Chicago & St. Louis Railway Company and enter their appearance herein. And it appearing to the commission that heretofore at the September term, A. D. 1900, of the circuit court of Saline county, in the State of Illinois, the said relator brought his said action against the said defendant railroad company to recover certain penalties for alleged discriminations on the line of said railroad betweeen Cairo, Ill., and Danville, Ill., and particularly discriminations alleged to have occurred in charging a higher rate upon hard wood lumber from the station of Harrisburg, Ill., than was charged and received for the same product going in the same direction from Cairo, Ill., and being a longer distance by about seventy (70) miles.

And it further appears to the commission that the said railroad company does not admit that it has been guilty of unjust discriminations, but claims that the difference in the rate charged between Cairo, Ill., and points north of Cairo is not unjust discrimination. Still in order to avoid all controversies with reference to the discriminations charged said railroad company has agreed with the said relator and his attorneys representing the People of the State of Illinois in said suit and consent to a judgment of two thousand (2,000) dollars in full of all alleged discriminations or extortions, and of all claims and charges of extortion and discriminations under the Illinois statutes at any and all of its stations on the line of the Cairo division of said railroad company between Cairo and Danville, Ill.

It further appears to the commission that said suit was brought without the authority and the consent of the said Railroad and Warehouse Commission.

It further appears to the commission that the original declaration filed in said cause does not sufficiently set up the charges of extortion and discrimination for which recovery is sought to be had.

It is further ordered that said relator Siegel Copel, State's attorney of Saline county, and the said Choisser, Whitley & Choisser, attorneys for said relator, are authorized by the said commission to file an amended declaration in said cause sufficiently setting forth such items of extortion and discrimination for which recovery might be had.

It is further ordered by the Railroad and Warehouse Commission, and consent is hereby given by said Railroad and Warehouse Commission that said cause of action be settled by an entry of a judgment therein against the said Cleveland, Cincinnati, Chicago & St. Louis Railway Company for the sum of two thousand (2,000) dollars in full of all penalties arising or accruing by reason of any of the alleged charges of discrimination or extortion set forth in said amended declaration and in full of all charges and claims for extortion and discrimination occurring on the said Cairo division of the said Cleveland, Cincinnati, Chicago & St. Louis Railway Company up and to the filing of such amended declaration.

It is further ordered by said commission that all attorneys' fees to the attorneys for said relator in said cause of action shall in no wise be charged to the Railroad and Warehouse Commission or any claim presented against the said Railroad and Warehouse Commission for the services of such attorneys.

Dated at Springfield, Ill., this 8th day of January, A. D., 1901.

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

In the matter of the crossing of the Chicago & Alton Railway Company by the Chicago, Peoria & St. Louis Railway Company at Bridge Junction, St. Clair county, Ill.

This cause comes before the commission on the objection of the Chicago & Alton Railway Company to the crossing of their tracks at grade by the Chicago, Peoria & St. Louis Railway Company. Objection was made July 23, 1901. Notice sent to the Chicago, Peoria & St. Louis Railway Company on that date. Place of crossing viewed July 30, 1901. Case continued at request of Chicago, Peoria & St. Louis Railway Company to Sept. 7, 1901. At that time it was learned that the Chicago, Peoria & St. Louis Railway Company had gone ahead and finished up the crossing and was using it. Hearing had in the office of the Railroad and Warehouse Commission, at Springfield, on that date, and continued for decision until Nov. 8, 1901. Further hearing on said date. The Chicago, Peoria & St. Louis Railway Company on that date filed a motion to dismiss the proceedings for want of jurisdiction, which motion was overruled, for the reason that it came too late, the case having been heard without objection up to that time. Cause continued until Nov. 19, 1901, and all parties met at Bridge Junction for the purpose of trying to make a final settlement. All parties interested were present and the board notified the parties interested that they would require an overhead crossing. Cause continued until Dec. 3, 1901, to allow railroads to present plans for the overhead crossing, at the regular meeting of the Railroad and Warehouse Commission at their office at Springfield.

The proposed crossing crosses from east to west over the Wabash railroad, the Cleveland, Cincinnati, Chicago & St. Louis railroad, the Terminal Railroad Association, of St. Louis, and the Chicago & Alton railroad, all of which are main tracks of the above mentioned roads. The point where this road crosses the terminal is at, or near, where the other three railroads connect with the terminal with their passenger trains going into and coming out of St. Louis over the Eads bridge, the larger portion of the passenger business going into St. Louis over the Eads bridge and the terminal tracks from the north.

The Chicago, Peoria & St. Louis Railroad Company have recently built a new freight house, and are building several miles of switches and tracks in their yard, directly west of where this proposed crossing is. They are elevating all the tracks from seven (7) to twenty (20) feet above the natural surface of the ground; and in our opinion there will be no trouble for them to elevate the one track to such a distance that they can cross over the above mentioned tracks by an overhead crossing, and in that way save all danger of collision at the grade crossing.

The Chicago, Peoria & St. Louis Railway are doing the switching across their track, as now located, for the Illinois Central Railroad Company as well as for themselves, and they themselves have yards on each side of the proposed crossing, where there is a constant switching back and forth from one yard to the other, and which is necessarily very dangerous by reason of the great number of trains crossing their tracks at this point, and will unnecessarily impede and endanger the travel and transportation over the Chicago & Alton Railway track.

It is claimed by the Chicago, Peoria & St. Louis Railway that it would be a great hardship on them to have to erect and maintain an overhead crossing. This, of course, is true; but when we consider the great number of accidents at grade crossings, the great expense of putting in and maintaining interlockers, we are of the opinion that within the next ten years, if the said company erect and maintain an overhead crossing, they will have saved more than sufficient money to pay the entire cost of said overhead crossing, by reason of having no accident and no flagman or lockmen to pay. Therefore, in view of the above facts,

It is hereby ordered by the board that the Chicago, Peoria & St. Louis Railroad Company have leave to cross the track of the Chicago & Alton Railway Company at Bridge Junction, where their tracks have been placed since the beginning of this proceeding, with the overhead crossing; that the said overhead crossing shall leave twenty-two (22) feet in the clear from the top of the rails of the Chicago & Alton Railway Company to the lower part of the superstructure of the said overhead crossing of the Chicago, Peoria & St. Louis Railway Company.

It is further ordered that the said Chicago, Peoria & St. Louis Railway Company shall pay the entire cost of the construction and future maintenance of said crossing.

It is further ordered that the Chicago, Peoria & St. Louis Railway Company pay the cost and expenses of the commission incurred upon this petition.

It is further ordered that the Chicago, Peoria & St. Louis Railway Company be permitted to use the tracks which have been put in by them since the commencement of this proceeding, and after this commission has taken jurisdiction of this case, for the purpose of carrying material across the tracks of the Chicago & Alton Railway Company to raise their grade sufficiently for the approaches to the crossing over the Chicago & Alton Railway Company, provided such use shall not exceed three (3) months from the date of this order. And that this case is continued until the regular meeting of this commission on the first Tuesday after the first Monday of March, 1902.

Dated at Springfield, Illinois, Dec. 3, 1901.

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

Chicago, Milwaukee & St. Paul Railway Company

vs.

Alpheus P. Goddard, Alpheus J. Goddard, and The Freeport General Electric Company.

Crossing Case.

In the matter of the crossing of the Chicago, Milwaukee & St. Paul Railway tracks by Alpheus P. Goddard and Alpheus J. Goddard and the Freeport General Electric Company, with their electric railroad tracks, on Shawnee street, extended near the eastern limits of the city of Freeport.

APPEARANCES:

C. B. KEELER, Attorney for Complainant.
ALPHEUS P. GODDARD, for Defendants.

Opinion of Commission, by JAMES S. NEVILLE, Chairman.

This was a petition filed by the Chicago, Milwaukee & St. Paul Railway Company, alleging that defendants were a railroad company, and that they were attempting to cross their tracks on Shawnee street, near the eastern limits of the city of Freeport, with a railroad track at grade; and that they objected to such crossing, and asked that the commission view the proposed crossing and decide what was the proper place and mode of crossing for said defendants.

Petition sets up that the defendants are common carriers for the transportation of passengers and freight on their railroad, to be operated by electric power in and through the city of Freeport, and over the proposed crossing of the Chicago, Milwaukee & St. Paul Railway on said Shawnee street.

Commission viewed the proposed place of crossing, with complainant's attorney and superintendent, and Alpheus J. Goddard, defendant, on Nov. 21, 1901.

The case was set for trial Dec. 5, 1901, in the office of the Railroad and Warehouse Commission, in Chicago, and defendants notified.

Dec. 4, 1901, the defendants, Alpheus P. Goddard and Alpheus J. Goddard, filed in the office of the Railroad and Warehouse Commission at Springfield the following plea:

"The above named defendants, Alpheus P. Goddard and Alpheus J. Goddard, for answer to the complainant in this proceeding, respectfully state:

"*First*—That they deny that the said Railroad and Warehouse Commission of the State of Illinois have any jurisdiction in the premises.

"*Second*—That said defendants say that they have a meritorious defense to the said petition, and save all the rights thereof the same as if the same had been set forth. Wherefore the defendants pray that the complaint be dismissed."

It must be contended by the defendants, under their plea to the jurisdiction, that the Railroad and Warehouse Commission have no jurisdiction over electric railroads, or that the defendants are not a railroad company within the meaning of the statute.

The statute provides that hereafter any railroad company desiring to cross with its tracks the main line of another railroad company shall construct the crossing at such a place and in such a manner as will not unnecessarily im-

pede or endanger the travel or transportation upon the railroad so crossed. If, in any case, objection is made to the place or mode of crossing proposed by the company desiring the same, either party may apply to the Board of Railroad and Warehouse Commissioners, and it shall be their duty to view the ground, give all parties interested an opportunity to be heard, and after full investigation, with due regard for the safety of life and property, the board shall give a decision, describing the place where and the manner in which said crossing shall be made. But in all cases the compensation to be paid for the property actually required for the crossing, and all damages resulting therefrom, shall be determined in the manner provided by law, in case the parties fail to agree.

It cannot, under our view of this case, be insisted that an electric railroad company is not a railroad company within the meaning of the statute. The Supreme Court of this State, in the case of Moses *et al.* against the P., Ft. W. & C. R. R. Co., 21 Ill., 523, hold that street railroads are railroads.

Again, in the city of Chicago against Evans *et al.*, 24 Ill., 56, the same rule is laid down.

In the case of the Electric Railroad Company against the Rapid Transit Company, 24 New York, 566, it was held that an electric railway company was, within the meaning of the statute (very similar to our statute), a railroad company.

The Chicago Northwestern Railway Company against The Electric Railway Company, 95 Wis., 561, it was held that an electric railway company was, within the meaning of the statute, a railroad company.

The former Illinois Railroad and Warehouse Commission, page 337, Decisions and Opinions of the Railroad and Warehouse Commission of Illinois, held that an electric railroad was a railroad within the meaning of the statute.

The same question has been decided by the Circuit Court of the United States, in a very late decision, in the case of Mallot against The City of Collinsville, 108 Federal Report, 313, and I can see no reason why we should not follow those decisions. A railroad company organized as this company, for the purpose of transporting both passengers and freight, most certainly is in the same line of business (that of common carrier) as any railroad company operating by steam power, and, in our view of the meaning of the statute, is a railroad.

It may be insisted that the respondents are not a railroad company within the meaning of the statute for the reason that the franchise is granted to Alpheus P. Goddard and Alpheus J. Goddard, as individuals. But, in view of the fact that they are to operate their road in connection with the General Electric Company, a railroad operated by a corporation, and that their said road is to be a part of that system, and in view of the further fact that the statute, section one, provides that hereafter any railroad company (not a corporation) desiring to cross the main track of another railroad company shall construct its crossings in such a manner as not to unnecessarily impede or endanger the travel of said road. We are of the opinion, and so hold, that for the purpose of this Act, that any person, company, or corporation desiring to cross another railroad track with a railroad track must cross it at such place and in such a way that it will not unnecessarily impede or endanger the travel of the railroad company so crossed; and that it will not unnecessarily endanger the lives or property of the public, regardless of whether it is a railroad corporation or an individual, the law applying to the railroad itself, and not to the owners or operators.

This question has been settled to our entire satisfaction in the case of Chicago Dock & Canal Co. against L. P. Garrity *et al.*, 115 Ill., 155, on page 164. In that case the Supreme Court says:

"The city council or board of trustees shall have no power to grant the use of, or the right to lay down, any railroad tracks in any street of the city, to any steam or horse railroad company, except upon a petition of the owners of the land representing more than one-half of the frontage of the street, or so much thereof as is sought to be used for railroad purposes. It is very clear that 'natural persons' are here within the intention, although not within

the letter of the Act, for the injury against which protection is intended to be afforded is the laying of railway tracks in the streets. By whom the tracks shall be laid and the cars thereon operated is, manifestly, of no consequence whatever. The same result, in all respects, will follow the laying of railway tracks in the streets and operating cars thereon by individuals as will follow the laying of them by corporations. The use of the word 'company,' we have no doubt, was simply because such tracks are almost always laid and operated by companies. The clause should be read as including both corporations and individuals."

On December 5th the parties met at the office of the Railroad and Warehouse Commission, in Chicago, for a hearing, C. B. Keeler representing the complainant. Alpheus J. Goddard appeared in person and asked to be excused from taking any part in the trial.

Thereupon the commission found for the complainant on the plea to the jurisdiction, holding that the commission had jurisdiction over electric railroads, under the statute providing for railroad crossings, the same as over steam railroads; and holding that the defendants are a railroad company within the meaning of the statute, and proceeded to hear the evidence.

The evidence shows that the proposed crossing of the complainant's road by the defendants' electric road is at the foot of a very deep grade from the south, to-wit: 100 feet to the mile; that it is within 90 feet of the embankment of the Illinois Central Railway, which is about 20 feet high, that absolutely shuts off all view of trains coming from the north, which pass under the Illinois Central Railway within 90 feet of Shawnee street and the proposed crossing by the said electric railway over the Chicago, Milwaukee & St. Paul railway; that trains coming from the north and crossing under the Illinois Central Railway cannot be seen by a person standing on the Chicago, Milwaukee & St. Paul track at the proposed place of crossing until they are within 150 feet of the crossing; that a car on the electric track 25 feet north from the proposed crossing cannot be seen by an engineer coming from the north on the Chicago, Milwaukee & St. Paul Railway, until they are within about 50 feet of the crossing; that the grades of the roads of both parties descend to the proposed point of crossing; and for the above reasons it is necessarily a very dangerous place of crossing.

The evidence shows that an electric road comes east on Empire street, which is about 1,000 feet south of the proposed crossing, to Bauscher street; thence south to Adams street on Bauscher street; thence northwest to Chippeway street on Adams street; thence north to Shawnee street on Chippeway street; thence east on Shawnee street across the Chicago, Milwaukee & St. Paul Railway to Arcade avenue; thence north under the Illinois Central railway tracks to Grand avenue. The intersection of Bauscher and Adams streets is within a very short distance of the crossing of Adams street over the Chicago, Milwaukee & St. Paul Railway, which is by an overhead bridge, and the commission are of the opinion that the proper place to cross is over a bridge on Adams street or between Shawnee street and Adams street by an overhead crossing.

In this case the Chicago, Milwaukee & St. Paul Railway Company objected, as provided by the statute. The commission have given notice to the defendants; have viewed the crossing, as provided for by law, and have heard the evidence of the objectors to the proposed place of crossing and have given all parties interested an opportunity to be heard, and the board, after full investigation of all the facts, and a thorough inspection of the ground, find that the proposed crossing is at an unnecessarily dangerous place; that it will unnecessarily impede and endanger the travel over the complainant's railroad, and that there is within so short a distance a place of crossing where the defendants' road can be put over the road of the complainant, and thereby prevent any danger that could or would arise from the grade crossing; prevent any unnecessary delay to the complainant company by reason of a grade crossing, and be far better for the defendants' own road, with very little more expense than the proposed crossing.

And for the above reasons, we shall hold that the proposed place of crossing is unnecessarily dangerous, and will unnecessarily impede and endanger

the travel of the complainant's company, and that the proper place of crossing is by an overhead crossing at the intersection of Adams street and the Chicago, Milwaukee & St. Paul Railway Company, or between Shawnee street and Adams street.

It is therefore ordered by the commission, that the respondents, Alpheus P. Goddard and Alpheus J. Goddard and the General Electric Company of Freeport, a company erecting a railway at Freeport, have leave to cross with its tracks by an overhead crossing on Adams street, over the tracks of the Chicago, Milwaukee & St. Paul Railway, and they are ordered not to cross at grade on Shawnee street; that said overhead crossing shall leave 22 feet in the clear from the tops of the rails of the Chicago, Milwaukee & St. Paul Railway Company to the lower part of the superstructure of the said overhead crossing of the defendants' company.

It is further ordered that the said Alpheus P. Goddard and Alpheus J. Goddard and the General Electric Company, railway company, pay the entire costs of the construction and maintenance of the said crossing of their said railway over the Chicago, Milwaukee & St. Paul Railway on said Adams street.

It is further ordered, that the said Alpheus P. Goddard and Alpheus J. Goddard and the General Electric Company of Freeport, railroad company, pay the cost of the commission in this proceeding.

Dated at Springfield, Ill., Dec. 11, 1901.

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

The Aurora, Elgin and Chicago Railway Company,

vs.

The Suburban Railroad Company, Chicago Terminal Transfer R. R. Co., The Lake Street Elevated R. R. Co. and The Chicago & Harlem Ry. Co.

To the Railroad and Warehouse Commission of the State of Illinois:

Your petitioner, The Aurora, Elgin & Chicago Railway Company, respectfully represents unto your honorable board, that it is a railroad corporation organized and existing under the provisions of an Act of the Legislature of the State of Illinois, relating to the incorporation of railroad companies, approved and in force March 1, 1872, and Acts amendatory thereof, and that it has the right as such railroad corporation to acquire property for and to construct and operate its railroad, from the city of Aurora, Kane county, Ill., through the counties of Kane, DuPage, and Cook, and the cities, towns and villages situated in such counties, to the city of Chicago, Cook county, Ill., also certain branch lines of railroad to the city of Batavia and the city of Elgin, Ill.

Your petitioner further represents unto your honorable board that it has obtained the necessary grants and ordinances from the various municipalities through which its said railroad will be operated and maintained, including the village of Harlem, the town of Cicero, and the city of Chicago, all in Cook county, Illinois; that it has purchased and acquired the private property for its right of way from the city of Aurora to said city of Chicago, including its entire right of way through the village of Harlem, the town of Cicero and into the city of Chicago, with the exception that it has not yet acquired the right to cross the private right of way and tracks of the respondent, the Chicago Terminal Transfer Railroad Company, in the village of Harlem, Cook county, Ill., at the location designated upon the maps hereto attached and

hereinafter referred to as "Crossing No. 1;" said tracks of respondent, the Chicago Terminal Transfer Railroad Company, at said location being operated by the respondent, the Suburban Railroad Company, under lease.

Your petitioner further represents unto your honorable board that said respondents severally claim to be railroad corporations, organized and existing under the same Acts of the Legislature of the State of Illinois, as petitioner; that in the construction and maintenance of petitioner's railroad it will be necessary for it to cross at grade at three points, the lines of railway operated by respondent, the Suburban Railroad Company, with two or more tracks, and to hang overhead and place underground the necessary wires, connections and apparatus, for the operation of the same, and that for the purpose of more particularly describing the location and surroundings of such crossings, your petitioner attaches hereto and makes a part hereof, a blue print map, marked "Exhibit A" upon which the route of petitioner is colored yellow and the particular points of crossing in question, are within red rings designated respectively as "Crossing No. 1," "Crossing No. 2," and "Crossing No. 3."

Your petitioner further represents unto your honorable board that "Crossing No. 1" occurs at the point east of Concordia cemetery and just north of Harrison street if extended, in the village of Harlem, Cook county, Illinois, where petitioner intersects the branch line of the Chicago Terminal Transfer Railroad company, which branch line of said respondent extends from Randolph street southerly to Harrison street if extended, and thence easterly along the line of Harrison street if extended to Desplaines avenue, and consists of a single track with one side track or siding at the point where petitioner proposes to cross the same as aforesaid; that said branch line is not operated by respondent, the Chicago Terminal Transfer Railroad Company as a steam railroad, but is being operated by the respondent, the Suburban Railroad Company, for the carriage of passengers only by means of trolly cars; said respondent, the Suburban Railroad Company, claiming the right to so operate upon said tracks by virtue of a lease from the Chicago Terminal Transfer Railroad Company.

Your petitioner further represents unto your honorable board that "Crossing No. 2" as designated upon "Exhibit A," occurs in Harrison street, in the town of Cicero, Cook county, Illinois, at the point where petitioner's railway crosses said Harrison street, between Oak Park avenue and Euclid avenue, in the town of Cicero, Cook county, Illinois.

Your petitioner further represents unto your honorable board that "Crossing No. 3" occurs at the point in West Fifty-second avenue in the city of Chicago, Ill., where petitioner's railway crosses said West Fifty-second avenue, between Harrison street and Flourney street.

Your petitioner further represents unto your honorable board that said respondent, The Suburban Railroad Company, is operating a line of double track street railway in and along Harrison street, at the location referred to as "Crossing No. 2," and is likewise operating a line of double track street railway in and along Fifty-second avenue at the location herein referred to as "Crossing No. 3." That that portion of said respondent's street railway line operated at Crossing No. 2 is now in the town of Cicero, Cook county, Illinois, and that that portion of its street railway operated at the location designated as "Crossing No. 3," is now in the city of Chicago, Ill., but that both of said street railway lines were originally in the town of Cicero, Cook county, Illinois, and respondent claims the right to maintain and operate said lines of street railway, under grant from the said town of Cicero, by an ordinance passed July 19, 1885, and that all of said street railway lines are operated by electric trolly cars.

Your petitioner further represents unto your honorable board that it has caused to be prepared and attached hereto, and made a part hereof, a blue print map, marked "Exhibit B," which shows in detail the tracks of the respondent, The Chicago Terminal Transfer Railroad Company operated by respondent, The Suburban Railroad Company, as aforesaid, at the location herein referred to as "Crossing No. 1," and the manner in which petitioner proposes to cross the same; that at said location the tracks of petitioner would cross the single track of the Chicago Terminal Transfer Railroad

Company, and would cross the switch and siding of said respondent at the southern point of such switch or siding, and it would be necessary for petitioner to lengthen out said siding so as to carry the point of said switch and siding over the proposed tracks of petitioner, and petitioner has indicated on said blue print map, marked "Exhibit B," by dotted lines, the proposed change in such switch and siding; that "Exhibit C" and "Exhibit D," which are also attached hereto and made a part of this petition, show respectively in detail the location of the street railway tracks of respondent, The Suburban Railroad Company, and the manner in which petitioner proposes crossing same, at the location known as "Crossing No. 2" and "Crossing No. 3."

Your petitioner further represents unto your honorable board that the only interest which the respondent, The Chicago Terminal Transfer Railroad Company has in this proceeding is that of the lessor of its branch line of railroad to respondent, The Suburban Railroad Company, at the location known as "Crossing No. 1."

Your petitioner further represents unto your honorable board that the respondents, The Lake Street Elevated Railroad Company and The Chicago & Harlem Railway Company, claim to have some interest in the lines of railway operated by The Suburban Railway Company, the precise nature of which, however, is unknown to your petitioner.

Your petitioner further represents unto your honorable board that it proposed to said respondents to make said three crossings at its own expense, and to furnish all frogs, special work and materials necessary for each of said crossings, and to perform all the labor and put the same in position, and to keep up and maintain such crossings, frogs, special work and materials, and also to stop its cars and trains before attempting to go over said crossings. And while the proposed place and mode of crossing by your petitioner, in each of said three instances, would not unnecessarily impede and endanger travel or transportation, yet said respondents object to the places and modes of crossing proposed by your petitioner aforesaid.

Wherefore your petitioner prays that this honorable board will give notice to the said Suburban Railway Company, the Chicago Terminal Transfer Railroad Company, the Lake Street Elevated Railway Company and the Chicago & Harlem Railway Company, all of which are made respondents hereto, and proceed to view the sites of said several crossings, and upon investigation and hearing pursuant to the statutes and to the rules and practices of this honorable board, in such cases made and provided, make such order with reference to the place, mode and manner of crossing at the three particular points referred to in this petition and its exhibits, as to this honorable board shall seem meet and proper, and for such other relief as may be appropriate.

THE AURORA, ELGIN & CHICAGO RAILWAY COMPANY,
By F. B. BICKNELL, *Manager.*

ALBERT J. HOPKINS,
S. P. SHOPE,
Solicitors.

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

The Aurora, Elgin & Chicago Railway Company,

vs.

The Suburban Railroad Co., Chicago Terminal Transfer Co., Lake Street Elevated R. R. Co., and the Chicago & Harlem Ry. Co.

Petition for Three Crossings, February, 1902.

APPEARANCES:

SHOPE, MATHISS, ZANE & WEBBER; HOPKINS, DOLPH & SCOTT, for Petitioner.
CLARENCE A. KNIGHT, for the Lake Street Elevated R. R. Co.
JESSE BARTON, for the Chicago Terminal Transfer Co.

The petition in this case alleges, and it is conceded by the respondents, that all of said companies are railroad companies within the meaning of the statute, and that this board has jurisdiction of the companies and of the subject matter. The only question then for consideration is the question of crossing.

Crossing No. 1 is the crossing of the petitioners' tracks over the tracks of the Chicago Terminal Transfer Co., at a point on the east side of the Concordia cemetery, just north of Harrison street, if extended. This crossing is within a few hundred feet of the end of the track of the Chicago Terminal Transfer Co., which is a single track, and the evidence in this case shows that at the present time there are very few cars operated on said track and very few people ride on the cars over the proposed place of crossing. This board has viewed the place of crossing and has taken evidence, which is given very fully in the record, as to the location of the ground, and from the evidence taken, as well as from the observation of the commission at the time of viewing the proposed place of crossing, it seems certain that there is no special reason for an overhead crossing at this place at present. It is on a very level piece of ground, with nothing to obstruct the view for several hundred feet each way, and very few cars operated over the road of either company at present; and while this commission very much desires that all railroad crossings should be made overhead or under highway crossings, from the evidence and the surroundings in this case it is very clear that it would be a great hardship on a new company to put an overhead crossing at this place, and in our opinion it is not necessary at the present time, and should it at any future time become necessary, this commission will retain the right by the order in this case to order an overhead crossing.

Crossing No. 2 is the proposed crossing near Harrison street in the town of Cicero, Cook county, Illinois, of the Suburban Railroad Company, where the said company is operating a double track railway in and along said Harrison street. This proposed crossing crosses the tracks of the Suburban Company where they are used very frequently by cars on each track running in opposite directions and hauling a great many passengers. During the racing season they run a great many cars to the race-tracks and haul thousands of passengers each way every day. While this is on a very level piece of ground and nothing to obstruct the view from either side, on account of the great amount of travel on the Suburban Railroad tracks, in our opinion it is necessary to have an overhead crossing, and that a grade crossing will unnecessarily impede and endanger the property of the respondent company and the lives of its patrons, and for that reason the order in this case will be made so that an overhead crossing will be built at crossing No. 2.

Crossing No. 3, which is on Fifty-second street, where the Aurora, Elgin & Chicago Ry. Co., petitioners, propose to cross the Suburban Company's tracks, is within a very short distance of where the ordinance of the town of Harlem provides that the Aurora, Elgin & Chicago Railway Company shall come to grade to connect with the Metropolitan road, and if this commission should order an overhead crossing, it would mean an abandonment of their proposed connection and would work a forfeiture of the franchise to the Aurora, Elgin & Chicago Ry. Co. through the town of Harlem. We regret very much that the location and grade of the Metropolitan road is not such that the Aurora, Elgin & Chicago Ry. Co. could connect with it by an overhead elevated connection and thus put in an overhead crossing on Fifty-second street, but in view of the fact that it is on a very level piece of ground and nothing to obstruct the view, and the further fact that the ordinance granting the franchise to the company through the town of Harlem provides that within twenty years from the granting of the franchise the said railway company shall elevate its tracks, we are of the opinion that there is no present necessity for an overhead crossing beyond what there is at any other crossing on the open prairie, and the order in this case will provide for an interlocker to be put in on Fifty-second street crossing No. 3 and to be operated by the Aurora, Elgin & Chicago Railway Company, and that at any time hereafter when, in the opinion of this commission, it is necessary to have an overhead crossing, that this commission reserves the right to order the same, and the company accepting the right to cross at grade accepts it on the above conditions, that whenever ordered to put in an overhead crossing by the then Railroad Commission of the State of Illinois, that they shall do so at their own expense within a reasonable time, to be fixed by the commission.

The Aurora, Elgin & Chicago Ry. Co.,

vs.

The Suburban Railroad Co., The Lake Street Elevated R. R. Co., and the Chicago Terminal Transfer R. R. Co.

Petition for Crossings.

ORDER.

And now, on the 21st day of February, A. D. 1902, come the petitioner in this cause, by Shope, Mathis, Zane & Webber and Hopkins, Dolph & Scott, its attorneys, and the Suburban Railroad Company, and the Lake Street Elevated Railroad Company, by Clarence A. Knight, their attorney, and the respondent, The Chicago Terminal Transfer Company, by Jesse Barton, its attorney, and the commission now determines that it has full jurisdiction over the parties and subject matter hereof, and the commission having listened to the testimony produced by the parties hereto, and fully examined the exhibits and listened to the argument of counsel representing the respective parties hereto, and now being fully advised in the premises find as follows:

The said petitioner and the respondents will, for convenience, be hereinafter designated as follows:

The petitioner—"Aurora Company."

The Suburban Railroad Company—"Suburban Company."

The Lake Street Elevated Company—"Elevated Company."

The Chicago Terminal Transfer Company—"Terminal Company."

A. That the petitioner filed herein its petition to cross the lines of railroad of the respondents, the Suburban Company, Elevated Company and the Terminal Company at the points of crossing shown on "Exhibit A" submitted

with said petition and indicated at said points and numbered thereon as Nos. 1, 2 and 3; that at the hearing of this cause the Aurora Company changed the point of crossing No. 1, as shown and indicated by the blue print hereto attached and marked "Exhibit E."

B. That the Terminal Company is the owner of and the Suburban Company the lessee of the railroad at point of crossing marked No. 1, as shown on "Exhibit E," and that the Elevated Company is the lessee of the Suburban Company of said railroad at crossing No. 1.

C. That the Suburban Company is the owner of the railroad at crossings Nos. 2 and 3, said railroad at crossing No. 2 being subject to a lease to the Elevated Company.

D. That the proposed manner of crossing at No. 2 by the Aurora Company, as shown in their petition, would make said crossing dangerous and would impede travel and transportation upon the said line of railroad of the Suburban company, and that objection has been made to the mode of crossing proposed by the petitioner, and that the petitioner has applied to this commission to prescribe the place where and the manner in which said crossings Nos. 1, 2 and 3 shall be made and the commission having viewed the ground at crossings Nos. 1, 2 and 3 and given all parties interested an opportunity to be heard, and having due regard for the safety of life and property, does hereby make and order as follows:

First—That said Aurora Company shall be permitted and is hereby authorized to cross the track or tracks and right of way of the Terminal Company and the Suburban Company and the Elevated Company as lessees at crossing No. 1 at the place and in the manner and mode shown in "Exhibit E," subject to the provisions, conditions and limitations hereinafter set forth with reference to said crossing.

(a) The necessary frogs, switches and appurtenances shall be put in at said point of crossing No. 1 solely at the expense of the Aurora Company, under the supervision and direction of the engineer of the Suburban Company. Said crossing shall be so placed at No. 1 as not to interfere with the operation of the cars of the Suburban Company or the Elevated Company over the tracks during the progress of said work. Provided the said crossing at No. 1 shall be what is commonly known as a standard double track crossing with an open throat for both the Aurora Company and the Suburban Company.

(b) The Aurora Company having stated before the commission that it intended to operate its said railroad by electricity, adopting a third rail system for said purpose, such third or live rail to so operate said railroad may be placed with protection boards upon the right of way of the Suburban Company and the Terminal Company at any point not nearer than ten feet of the outer rails of the track of the Suburban Company at said point of crossing, as the same now exists or may hereafter be laid.

(c) The Aurora Company shall have the right to place and bury its electric wires underneath the right of way of the Suburban Company at said crossing No. 1, within a point not exceeding three feet outside of the two tracks of the Aurora Company, and shall so place said electric wires in conduits, or in such manner as may be directed by the Suburban Company, so as not to interfere in any manner whatsoever with the operation of the railroad of the Suburban Company and Terminal Company at said point.

(d) The Aurora Company shall pay to or keep said Suburban Company, said Elevated Company and said Terminal Company harmless from any loss or damage to persons or property that may occur or happen at said crossing by reason of the grant of this permit.

(e) The Aurora Company shall at all times and on all occasions before proceeding to cross the track or tracks of the Suburban Company at crossing No. 1, from either direction, stop its cars or trains within 50 feet of the point of crossing and send some fit and competent person to see that the crossing is free and clear and safe for the passage of the cars or trains of the Aurora Company or its lessees, and in no case shall said Aurora Company have the prior right of way over said crossing, and in all cases the Aurora Company's cars or trains shall refrain from crossing at said point

when Suburban car or a car of its lessee is proceeding toward said crossing and within two hundred (200) feet thereof.

(f) The Aurora Company shall at all times keep and maintain said crossing in perfect condition and repair and pay the whole and entire expense and cost thereof, and in case it shall fail so to do, the Suburban company or the Terminal company, or their respective lessees, shall be authorized so to do and the Aurora company shall promptly pay on demand the entire cost and expense thereof.

(g) Said point of crossing at No. 1 shall be considered and treated as a junction of the said two railroads.

(h) The detail and drawings for said crossing No. 1 shall be submitted to the engineer of the Suburban company for his approval before the same shall be placed at the crossing: *Provided*, In case the engineer of the said Suburban company shall not approve said plans or drawings within one day after submission to him, the same shall then be subject to the approval of the chairman of this commission.

(i) The foregoing provisions with reference to crossing No. 1 are each and all subject to the right of the commission hereafter to order at said point, such other overhead crossing or protection as it may deem advisable at the expense of the Aurora company.

(j) In case the Suburban company shall see fit to change the alignment of its present track or tracks the entire expense of so changing the same shall be borne by the Suburban company.

Second—That said Aurora company shall be permitted to and is hereby authorized to place at crossing No. 2 a temporary double track crossing, subject to the provisions as hereinafter contained, with reference to said crossing No. 2.

(a) Said crossing No. 2 shall be constructed and placed at said point of crossing, subject to the same terms, provisions, conditions, limitations and restrictions as herein contained with reference to crossing No. 1.

(b) The said temporary crossing No. 2 shall be so placed and constructed as not to interfere with the construction of an overhead crossing as herein provided.

(c) The foregoing provisions with reference to temporary crossing No. 2 are each and all subject to the provisions hereinafter contained with reference to the overhead crossing at said point.

Third—The said Aurora company shall be and is hereby permitted to cross the Suburban company at crossing No. 3 subject to the following provisions, conditions, limitations and restrictions, viz.:

(a) The said Aurora company shall place at said crossing No. 3 a half interlocking device by which the right-of-way shall be given to the Suburban cars or trains over said point of crossing, and the Aurora company's cars or trains, or its lessees, shall at all times stop to be interlocked before proceeding across said crossing, and such interlocking device to be so constructed as to derail the cars of the Aurora company.

The plans and specifications for such interlocking device at said point of crossing to be submitted to the engineer of the Suburban company and to the consulting engineer of this commission for their approval, and in case they shall not approve the same within five days after such presentation, then the same shall be referred to the chairman of this commission for his approval.

(b) The Aurora company shall not operate its cars or trains over said crossing until said interlocking device shall have been first installed: *Provided*, said Aurora company shall have the right to cross at said crossing temporarily, until the installation of said interlocking device, as hereinafter provided, subject to all the provisions with reference to crossing No. 1.

(c) Said Aurora company shall be liable to the Suburban company for all loss or damage to persons or property that may occur by reason of the permission for said grade crossing, as aforesaid, at said point No. 3.

(d) The Suburban cars or trains shall at all times have the preference of the right-of-way over said point of crossing No. 3.

(e) In case a Suburban car or train, or a car or train of its lessee, shall be proceeding northwardly, and on the viaduct, about nine hundred (900) feet south of said point of crossing, the cars or trains of the Aurora company shall be interlocked until such car or train shall safely pass said crossing: *Provided*, said Aurora company, in order to avoid waiting for a car or train of the Suburban company, or its lessee, as provided in said clause (e), may install a full interlocking device, in which case the foregoing provision as to clause (e) shall not apply.

Fourth—It is further ordered that said Aurora company shall, on or before Jan. 1, 1903, as a condition of granting this permission to construct a temporary crossing at No. 2, cause to be constructed at said point an overhead crossing in such a manner that the bottom or lower chord of the girders supporting the tracks over the tracks of the Suburban company shall be 14 feet above the top of the rails of the track or tracks of the Suburban company as now laid and under the general plans and specifications herewith submitted and approved by the commission and made a part of this order, and herewith filed with the commission as "Exhibit Z."

Provided, that while and during the time said Aurora company shall be engaged in the work of elevating said tracks at said point it shall not interfere with the operation of the cars or trains of the Suburban company, or its lessees, over said track at crossing No. 2, and that when the work shall have been completed, or prior thereto, the tracks of the Suburban company may be changed sufficiently so as to leave a clear head room of 14 feet; such change of location to be made as hereinafter provided: *Provided*, upon notice by the Aurora company that it is ready to proceed with the erection of said overhead crossing, the cars or trains of the Suburban company, or its lessee, shall cease operating at said point of crossing No. 2 during the progress of said work, not to exceed a period of 30 days: *Provided, however*, the Aurora company shall not give such notice prior to Nov. 1, 1902, and in no event shall the operation of the cars of the Suburban company be interfered with for a longer period of time than 30 days.

(a) The Aurora company shall at all times, at its own expense, keep and maintain in good repair and condition the said overhead structure.

(b) The Suburban company and the Terminal company shall have the right to attach underneath said overhead structure all such electric wires, cables, electric feeders and other electric appurtenances as it may deem advisable, and use the said overhead structure so far as it may deem necessary for the purpose of operating said railroad.

(c) The Suburban company shall, and all parties hereto consent, change its present tracks and right-of-way at crossing No. 2 in the manner shown on general plans herewith submitted for such overhead crossing, and shall make such change on or before Nov. 1, 1902. The top rails of the track when so relaid to be at the same height as the present rails are now laid, so as to leave the clear head room between the tops of the rails when so laid and the overhead structure to be erected by the Aurora company 14 feet, as herein prescribed. Said work of so changing the Suburban company's tracks must be done prior to the time when the Aurora company is ready to proceed with the work of said overhead crossing at No. 2. The Suburban company to have the right to construct, maintain and operate its road over said changed location, as shown in said plans indicating such changed location as ordered by the commission, and shall at all times have sufficient clearance for the passage of its cars over its tracks along, upon and over the right-of-way where said tracks are laid at said new location.

(d) The said overhead work to be completed on or before Jan. 1, 1903, unless the chairman of this commission shall, for good cause, extend the time of completion or the contractors shall be delayed by strikes, accidents or other causes interfering with the progress of the work.

(e) In case said Aurora company shall fail to comply with any one of the terms, conditions, limitations and restrictions contained in this order as to such temporary crossing at No. 2, or shall fail to complete the overhead crossing as herein provided and within the time as herein fixed for crossing No. 2,

or shall fail to place said interlocking device at crossing No. 3 before Oct. 1, 1902, then the Suburban company shall have and is hereby authorized to take up and remove the said crossings of the Aurora company and all the rails, ties and appurtenances upon the right-of-way of the Suburban company at either crossing Nos. 2 or 3.

Fifth—The respondents hereby, before this commission, agree that if the Aurora company shall faithfully and fully carry out and perform each and every of its obligations, duties and conditions in this order prescribed, that they will waive all proceedings to acquire said right of crossing under the Eminent Domain law of this State; otherwise, in case the Aurora company shall fail to comply in every respect with this order, then it shall acquire the right to maintain said crossing by virtue of condemnation proceedings.

Sixth—The commission hereby reserves to itself jurisdiction of all the parties and subject matter hereof until the full completion of the matters and things set forth for the purpose of carrying into full force and effect the terms and provisions of this order, and the right to enter upon, by its agents or employés, the right of way of the respondents herein and of the Aurora company after the completion of any part of said work herein prescribed and take up and remove the same in case the parties hereto shall in any respect fail to comply with the order and direction of the commission with reference thereto, either as herein prescribed or as prescribed in the future. All expense of so doing to be borne by the party at fault in respect to the matter to be so determined.

Seventh—All terms, provisions and conditions of this order shall apply to and be binding upon the respective successors, lessees and assigns of all the parties hereto.

Eighth—The Aurora company shall have the right to erect over the right of way at the respective crossings Nos. 1, 2 and 3, all wires, poles and appliances it may deem necessary for the purpose of conveying electric current to operate its said railroad, but all wires shall be at least seven (7) feet above any wires the respondents may have at said points and shall not be constructed in any manner so as to interfere with the operation of the cars of the respondents over said crossings.

Ninth—It is understood that "Exhibit E" attached to said order shows the track of the Terminal and Suburban companies shifted eastwardly from their present location. It is understood and agreed that when the Aurora company lays the crossings and special work called for by "Exhibit E" it shall have the right to cut the track of said Suburban company as now located and the Suburban company shall then shift its track to comply with the location shown by "Exhibit E."

Tenth—It is further ordered that the petitioner pay forthwith the cost of this proceeding, which said cost shall be paid prior to the said Aurora company entering upon or laying its temporary tracks as herein provided and which said cost shall be such sums as the commission may allow to the parties to this proceeding, and including the cost of the commission itself.

Approved:

J. S. NEVILLE,
Chairman.

The Aurora, Elgin & Chicago Ry. Co., by L. J. Wolf, President.
Chicago Terminal Transfer R. R. Co., by Jesse Barton, its General Attorney.
The Suburban Railroad Co., by Clarence A. Knight, General Counsel.
The Lake Street Elevated R. R. Co., by Clarence A. Knight, President.
The Suburban R. R. Co., by L. S. Owsley, President.

The Aurora, Elgin & Chicago Railway Company,

vs.

The Suburban Railroad Company, the Lake Street Elevated R. R. Co., and the Chicago Terminal Transfer R. R. Co.

Petition for Crossing.

WHEREAS, on the 21st day of February, A. D. 1902, the Board of Railroad and Warehouse Commissioners of the State of Illinois entered an order in the above entitled cause relating, among other matters, to the crossing of the Aurora, Elgin & Chicago Railway company and the Suburban Railway company at the intersection of the Aurora, Elgin & Chicago railway with 52nd avenue in the city of Chicago, Cook county, Illinois, in and by which said order it was provided that the petitioning company should install an interlocking device at said crossing which should be subject to the approval of the Suburban company and of the consulting engineer of this commission; and in case said parties were unable to agree upon the plan of such interlocker it was ordered that the chairman of this commission should approve of such interlocker, and

WHEREAS, the parties have been unable to agree upon all details of such interlocking device,

Now therefore, I, James S. Neville, chairman of the Railroad and Warehouse Commission, upon full investigation of said matter, order and adjudge that the attached blue print and plan of the interlocking device at said point of crossing marked "Exhibit A" and made a part hereof, shall be and the same is hereby approved.

It is further ordered, that said interlocking device specified in the attached plan and in this order shall be installed and in operation by Dec. 1, A. D. 1902, provided, however, for cause shown, said time may be extended by this commission.

J. S. NEVILLE,
Chairman.

The Aurora, Elgin & Chicago Railway Company,

vs.

The Suburban Railroad Co., the Lake Street Elevated Railroad Co. and the Chicago Terminal Transfer R. R. Co.

To the Railroad and Warehouse Commission of the State of Illinois:

Your petitioner, The Aurora, Elgin & Chicago Railway company, respectfully represents to your honorable board—

First—That it has heretofore filed before this board its petition asking for certain crossings with the Suburban Railroad company and in which crossings the Lake Street Elevated Railroad company and the Chicago Terminal Transfer Railroad company were also interested; that one of said crossings was known in the proceeding heretofore had before this board, as crossing No. 1, and occurred between this company and the Suburban Railroad company, at the point of crossing in Harlem, Cook county, Illinois, near Concordia cemetery; that one of said crossings was known in said proceedings heretofore had. as crossing No. 2, and occurred between petitioner's road and the Suburban railroad near Harrison street, and between Euclid avenue and Oak Park avenue, in the town of Cicero, now in the village of Oak Park, Illinois, and that the other crossing involved in said proceedings has been known therein as crossing No. 3, and occurred at the point of crossing between the road of your petitioner and the Suburban railroad on 52nd avenue, between Harrison street and Flournoy street in the city of Chicago, Cook county, Illinois.

Second—That such proceedings were had in the matter of said petition for crossings, and that on the 21st day of February, A. D. 1902, your honorable board entered an order providing the terms and conditions upon which the crossings aforesaid should be made, which said order remains of record with this commission, is made a part of this petition and to which reference is hereby made for greater certainty.

Third—That in and by said order it was provided that your petitioner should place at crossing No. 3, aforesaid, a one-half interlocking device, by which the right of way should be given to the cars and trains of the Suburban Railroad company, and might, at its election, in order to avoid waiting for such cars and trains, install a full interlocking device at said crossing, the plans and specifications for which to be subject to the approval of this board.

Fourth—That your petitioner elected to install a full interlocking plant, at said crossing No. 3, that plans and specifications for such interlocker were submitted and approved by the said Suburban Railroad company and the Metropolitan West Side Elevated railroad, and on to-wit: the 29th day of October, A. D. 1902, were approved by order of this commission, which remains of record with this board and to which reference is hereby made for greater certainty.

Fifth—Your petitioner further represents that said interlocking plant was placed in operation, as between the lines of your petitioner the Suburban Railroad company and the Metropolitan West Side Elevated railroad, on Thursday, the 6th day of November, A. D. 1902, at 12:00 o'clock noon, and ever since said time has been and is now in operation, controlling the movement of trains of said several railways at said point of crossing.

Sixth—Your petitioner further represents that no agreement exists between said several railway companies, interested in said crossing, to-wit: Your petitioner, the Suburban Railroad company, and the Metropolitan West Side Elevated Railroad, after the division of the cost of operating said interlocking plant and that your petitioner can come to no agreement with said other railway companies, in reference thereto; that your petitioner, in accordance with said order of this board, heretofore entered on the 21st day of February A. D. 1902, has placed said interlocker at said point, and will maintain the same, but that none of said orders, heretofore entered by this commission, fix or determine the amount or proportion which said several railroad companies shall pay towards the expenses of operating said plant, and that it is ready and willing to pay its just proportion of said operation.

Seventh—Your petitioner further represents unto this honorable board that in and by said order of Feb. 21, A. D. 1902, it provided that the Suburban Railroad company should change from its present location, at crossing No. 2, to a point further west, on or before Nov. 1, 1902, the particular place of such new location being shown upon Exhibit "Z" attached to said order; that such new location by the Suburban Railroad company would require it to cross Oak Park avenue, in the village of Oak Park, Ill., at a point between Harrison (sometimes called Estella street) and Harrison place; that your petitioner cut its rails and placed in position necessary frogs and special work so that said Suburban Railroad company might cross your petitioner's tracks at the new place of crossing on or before Nov. 1, 1902, as required by said order, but that on the 29th day of October, A. D. 1902, the board of trustees of the village of Oak Park, Ill., passed a resolution directing the village attorney to take such legal steps as might be necessary to prevent the Suburban Railroad company from making the crossing at Oak Park avenue, on the ground that said Suburban Railroad company had no municipal grant therefor; that said board of trustees thereupon proceeded in a body to said Oak Park avenue crossing and tore up the rails and ties which had been placed therein by said Suburban company, and a part of the special work which had been placed therein by your petitioner for the benefit of said Suburban company; that on the following day, Oct. 30, A. D. 1902, said village of Oak Park filed an intervening petition in the case of the Chicago Title and Trust Company vs. The Suburban Railroad company, pending in the circuit court within and for Cook county, Illinois, in which said last mentioned cause a bill

had been filed to foreclose a trust deed, executed by said Suburban Railroad company, securing certain bonds, and in which proceedings a receiver was appointed; that upon presentation of such intervening petition, the said circuit court of Cook county, Illinois, Judge Hanecy presiding, entered an order granting leave to said village to file said intervening petition making said village a party defendant to the original bill, giving it leave to answer the same, etc., and restraining the receiver and persons acting under him from proceeding with the construction at the new location across Oak Park avenue; that subsequently said village of Oak Park filed its answer in said original cause, and a cross bill, in which it prays that an injunction may issue permanently, restraining the said Suburban Railroad company from crossing at Oak Park avenue, alleging that the said Suburban Railroad company is proceeding without any municipal authority whatever, etc.; that all of said proceedings are still pending and undetermined before said circuit court of Cook county, Illinois; that said Suburban Railroad company has not obtained any municipal grant for such crossing, and insists that it is not necessary for it to secure such municipal grant; that the contentions of said several parties in said litigation can not, in the ordinary course of events, be determined for some time to come.

Eighth—Your petitioner further represents that in and by the terms of said order, it was provided that said change of location was to be made by the said Suburban Railroad company, before your petitioner commenced the construction of its elevation at said point, and that, because of the failure of said Suburban company to make the change in its location, on or before Nov. 1, 1902, as provided in said order, your petitioner has been unable to commence with or proceed with its construction of its elevated structure at said point.

Ninth—That in and by said order of Feb. 21, A. D., 1902, it was also provided that the work of your petitioner in elevating said tracks should be completed on or before Jan. 1, 1903, unless the chairman of this commission should for good cause, extend the time of completion or there should be delay by strike, accidents, or other causes; that owing to the fact that said Suburban company has not yet placed its tracks in such new location, and may not be able to do so for some time to come, it will be wholly impossible for your petitioner to complete the construction of said elevated structure by Jan. 1, 1903.

Your petitioner therefore prays that a hearing may be had before this commission, upon the question of the amount and proportion which each of said companies, to-wit: Your petitioner, the Suburban Railroad company, and the Metropolitan West Side Elevated railroad, shall pay towards the operation of said interlocking device, at crossing No. 3 by short day be fixed by this commission, and that upon such hearing this commission shall order and direct the proportions which each company shall bear and pay towards such operation expenses; that such process and notice may issue unto the said several companies as shall bring them before this commission, and that this commission will extend the time within which your petitioner shall complete the elevation at crossing No. 2, to such time as it may deem just and proper and that it will enter such other orders, in the premises, as may seem for the best interests of all parties interested.

THE AURORA, ELGIN & CHICAGO R. R. CO.
By Fred A. Dolph, its Attorney.

Hopkins, Dolph & Scott,
Shope, Mathis, Zane & Webber,
Attorneys for Petitioner.

The Aurora, Elgin & Chicago Railway Company,

vs.

The Suburban Railroad Co., the Lake Street Elevated Railroad Co. and the Chicago Terminal Transfer R. R. Co.

Petition for Crossings.

ORDER.

And now, on this 28th day of November, A. D., 1902, said cause coming on again to be heard, and the said petitioner appearing in this cause by Shope, Mathis, Zane and Weber, and Hopkins, Dolph & Scott, its attorneys, the respondent, the Surburban Railroad company and the Lake Street Elevated Railroad Co., by Clarence A. Knight, their attorneey, and L. S. Owsley, receiver of the Suburban Railroad Co., appearing in person and by Clarence A. Knight, his attorney, and the respondent, the Chicago Terminal Transfer Railroad Company by Jesse Barton, its attorney; and it also appearing to this commission that the Metropolitan West Side Elevated Railway Co. has appeared herein and submitted itself to the jurisdiction of this commission for the purpose of having this commission fix upon the portion which it should pay of the operation of the interlocking plant at 52nd avenue between Harrison street and Flournoy street, in the city of Chicago, Illinois, being the point of crossing heretofore known in these proceedings as crossing No. 3, which said interlocking plant and plan thereof as has heretofore been approved by this commission; and it further appearing to the commission that by order hereof entered on the 21st day of February, A. D., 1902, that the question of the division of the cost of operation of the interlocking plant at said crossing No. 3 was not determined by said order; and it also appearing by said order that the respondent, the Suburban Railroad company, was required to change its tracks and right of way at crossing No. 2 in accordance with the general plans shown as "Exhibit Z," and attached to said order and that said work of so changing said tracks should be done prior to the time when the Aurora company was ready to proceed with the work of the overhead structure at said crossing No. 2 required in said order, and it further appearing to the commission that said order provided that the overhead work should be completed by said petitioner the Aurora, Elgin & Chicago Railway company, on or before Jan. 1, 1903, unless the chairman of this commission should have good cause to extend the time of completion or the contractor should be delayed by strikes, accident or other causes interfering with the progress of work; and it further appearing to the commission that the work of changing said tracks by said respondent, the Suburban Railroad company, was prevented by action of the village authorities of the village of Oak Park, Cook county, Illinois, and that there is certain litigation pending in the circuit court, Cook county, State of Illinois, relating to the right of said respondent, the Suburban Railroad company, to cross Oak Park avenue at the point designated by the previous order of the commission, and said petitioner having filed herein its petition asking, first, that the proportion which each company should pay towards the operation of the interlocking plant at crossing No. 3, be fixed and determined by this commission as between the Suburban Railroad company, the Metropolitan West Side Elevated Railway company and the petitioner, the Aurora, Elgin & Chicago Railroad company; and second, that this commission should extend the time within which the petitioner, the Aurora, Elgin & Chicago Railway company should complete the elevation of its tracks at crossing No. 2 in accordance with the order of this commission heretofore entered;

Now, therefore, it is ordered and directed, that the Metropolitan West Side Elevated Railway company pay 23-38ths of the cost of the operation of the

interlocking plant at crossing No. 3, heretofore approved by this commission; that the respondent, The Surburban Railroad company pay 8-38ths of the cost of such operation of said interlocking plant, and that the petitioner, The Aurora, Elgin & Chicago Railway company pay 7-38ths of the cost of the operation of the said interlocking plant.

It is further ordered, that the time within which the petitioner, The Aurora, Elgin & Chicago Railway company shall complete the elevation of its tracks at crossing No. 2, in accordance with terms and conditions of the order heretofore entered herein shall be, and it is hereby, extended for the period of sixty (60) days after the first day of January, 1903.

Provided, however, That the chairman of this commission may, on account of weather conditions or other causes rendering it impossible for said petitioner to complete said railway within said time still further extend the time for the completion of the said work.

JAMES S. NEVILLE, *Chairman.*
A. L. FRENCH.

This agreement made and entered into by and between L. S. Owsley, as receiver for the Suburban Railroad company, and the Suburban Railroad company, parties of the first part, said first parties being hereinafter designated as the Suburban company, and the Aurora, Elgin & Chicago Railway company, party of the second part, hereinafter called the Aurora company, witnesseth:

Whereas, On the 21st day of February, A. D., 1902, the Railroad and Warehouse Commission of the State of Illinois entered an order upon the petition of the Aurora company in relation to the three crossings of its railway with the lines of railway of the said Suburban company, in which crossings certain other railroads, viz., the Lake Street Elevated Railroad company and the Chicago Terminal Transfer Railroad company had certain interests, as found and referred to in said order; said crossings being severally designated and described in said order and in said proceedings before said Railroad and Warehouse Commission as crossings number 1, 2 and 3, to which order and proceedings reference is hereby made; and,

Whereas, Said order of said Railroad and Warehouse Commission provided for a grade crossing at crossing No. 1 upon certain terms and conditions as said order specified, and provided for a temporary grade crossing at crossing No. 2, under certain terms and conditions in said order specified; and at said crossing No. 2 that said Suburban company should make certain changes in its tracks and said Aurora company should erect an overhead crossing to be completed by said Aurora company on or before Jan. 1, 1903, unless the chairman of said Railroad and Warehouse Commission should, for good cause shown, extend the time for the completion, or the work should be delayed by strikes, accidents or other causes interfering with the progress of the work; and

Whereas, Said order further provided with reference to said crossing No. 3 that the said Aurora company should cross the railroad of said Suburban company at grade, but should install a one-half interlocking device at said point of crossing, upon certain conditions specifically set forth in said order, with the privilege of electing to install a full interlocking device at said crossing, such interlocking device to be subject to the approval of said Railroad and Warehouse Commission; and,

Whereas, On the 29th day of October, A. D., 1902, an order was entered by said Railroad and Warehouse Commission of the State of Illinois, approving a plan of a full interlocking device at said crossing No. 3; and, whereas, said interlocking plant has been installed in accordance with said order approving said plan with the exception of the derail provided for by the said plan to be placed in the tracks of the railway of the said Suburban company, and is now in operation; and,

Whereas, On petition of the said Aurora company, an order was entered by said Railroad and Warehouse Commission on the 28th day of November, A. D., 1902, in and by which it was provided that the Metropolitan West Side

Elevated Railway company should pay 23-38ths of the cost of the operation of the interlocking plant at crossing No. 3; that the said Suburban company should pay 8-38ths, of the cost of operation of such interlocking plant; and, that the said Aurora company should pay 7-38ths of the cost of the operation of said interlocking plant; said order further providing that the time within which said overhead construction should be completed at crossing No. 2 should be extended for the period of 60 days from the first day of January, 1903, provided that the chairman of said Railroad and Warehouse Commission might on account of weather conditions or other causes rendering it impossible for the completion of said overhead construction, to further extend the time for the completion of said work; and,

Whereas, Certain litigation is now pending in the circuit court of Cook county, State of Illinois, involving the right to make the changes contemplated in said order of said Railroad and Warehouse Commission, of February 21, 1902, instituted by way of intervening petition and cross bill of the village of Oak Park, Cook county, Illinois, filed in the case of the Chicago Title & Trust company vs. The Suburban Railroad company and the various answers and cross petitions and other pleadings of the parties hereto; and,

Whereas, in the said case of The Chicago Title & Trust company vs. The Suburban Railroad company, the circuit court of Cook county, Illinois, appointed one L. S. Owsley, as receiver for said Suburban company;

Now, therefore, in consideration of the matters and things set forth in the order of said commission of February 21, 1902, and the order of November 28, 1902, and of the matters and things hereinafter set forth, it is mutually agreed by and between the parties hereto, as follows:

First—That the said Aurora company shall pay to the receiver of said Suburban company the sum of seven thousand five hundred (7,500) dollars. when this contract shall have been approved by the Railroad and Warehouse Commission of the State of Illinois and by the village of Oak Park so far as said village is required to approve and of the matters and things herein contained, but no part of this contract shall be considered as in force until the payment of said sum of money.

Second—The said Aurora company shall and it does hereby covenant and agree to save and keep harmless the said Suburban company from any cost or expense in relation to the installation, maintenance or operation of the interlocking device heretofore approved by the said Railroad and Warehouse Commission at crossing No. 3; the intent and meaning of this agreement being that the said Aurora company shall relieve the said Suburban company of the obligation imposed upon it by said order of the Railroad and Warehouse Commission of the State of Illinois entered on the 28th day of November, A. D. 1902, in, and by which order it was provided that said Suburban company should pay eight thirty-eighths of the cost of the operation of the said interlocking plant, and said Suburban company is by the approval of this contract by the Railroad and Warehouse Commission relieved and discharged from all cost and expense of all kinds in relation to said crossing No. 3, and interlocker: *Provided*, said Aurora company shall obtain from the Metropolitan West Side Elevated Railway company a release of any claim against said Suburban company for or on account of any matter or thing connected either with the installation, maintenance or operation of said interlocking plant at said crossing No. 3.

Third—It is further covenanted and agreed that the crossing of the Aurora company over the tracks and right of way of the Suburban company at crossing No. 2, shall be and remain at grade at the place of crossing east of the west line of Euclid avenue produced south where now operated and used, until the Suburban company shall change said crossing to a place east of the present crossing, which said new crossing is shown upon the blue print attached hereto marked "Fxhibit A" and made a part hereof and identified by the words "New Crossing No. 2." Said new crossing No. 2 shall be known as and herein referred to as crossing No. 2, and as a substitute and change of location and right of way from that of old crossing No. 2. The said Aurora company shall place its tracks in the location and upon the tangent

shown in said blue print marked "Exhibit A," on or before May 25, 1903, and shall install and place in position the frogs, switches and appurtenances, and build said crossing No. 2 for the Suburban company at the said crossing No. 2 without expense or any liability of the Suburban company for said work. Said crossing to be so constructed and in place ready for the Suburban company to connect with such special work and crossing on or before May 25, 1903. The said crossing and right of way as indicated upon said "Exhibit A" to be and remain the property of the Suburban company with like force and effect as though said crossing had not been placed at said point subject to the right of the Aurora company to use said crossing for operating its road thereon, as herein provided, and as provided in the order of Feb. 21, 1902, as herein changed or modified.

Fourth—It is further covenanted and agreed that said crossing at grade, at said crossing No. 2, shall be and is made upon the further following terms and conditions:

(*a*) The Aurora company shall install and operate on or before June 10, 1903, at its own cost and expense, a hand derailing device at said crossing No. 2, which said device shall be so installed and operated as to constantly leave the tracks of the Aurora company broken, excepting when said device is used to place tracks in position for the crossing by the cars of the Aurora company over the tracks of the Suburban company; the said device shall be so installed and operated that the lever or controlling device of the west bound track or tracks of the Aurora company shall be located west of the tracks of the Suburban company and the lever or controlling device of the east bound track or tracks of the Aurora company shall be located east of the tracks of the Suburban company.

(*b*) The said Aurora company shall furnish, install and maintain the crossing at No. 2, and all crossing frogs, switches and appurtenances necessary to make said crossing at grade at crossing No. 2 aforesaid, and said crossing to be the standard double track crossing with open throat for both the Aurora company and the Suburban company, and to be installed under the supervision and direction of the Suburban company.

(*c*) Said Aurora company shall not place or maintain nor operate a live third rail for conducting electricity at the point of crossing for a space of thirty-two feet, being the sixteen feet on each side of the center line of the tracks of the Suburban company.

(*d*) The provisions of the order of February 21, 1902, with reference to the operation of the Aurora company's road by electricity shall be applicable to crossing No. 2 except as herein otherwise provided.

(*e*) The Suburban company shall have the right to attach wires to the poles of the Aurora company at the point of crossing No. 2, but not in any manner to interfere with the operation of the road of the Aurora company.

(*f*) The said Suburban company shall at all times be given the right of way over said crossing No. 2; *provided, however,* that the said Suburban company shall not stop its cars upon said crossing.

Fifth—The said Suburban company does hereby waive any and all provisions for any overhead crossings at any of the three points of crossing provided for in the said order of the said Railroad and Warehouse Commission of the State of Illinois, provided the Aurora company carries out and fulfills this agreement and the agreement of February 21, 1902, as contained in said order of said commission, except as herein otherwise provided.

Sixth—The said Suburban company hereby gives and grants to said Aurora company and re-affirms in it, subject to the provisions of the order of February 21, 1902, as modified by this agreement, the right to cross at grade the tracks of the said Suburban company with the tracks authorized by its ordinances at the crossings referred to in said order of said Railroad and Warehouse Commission; the said crossing No. 2, however, shall be made permanently at the new location herein provided, including the right to install, maintain and operate all wires and electrical conductors, both underneath the tracks and right of way of the Suburban company and overhead which are necessary or which may facilitate the operation of the railroad of the

said Aurora company, provided that no such wires or electrical connections shall interfere with the operation of the railroad of the said Suburban company.

Seventh—This contract, with all its terms and provisions, shall apply to such additional tracks as either company may hereafter lay at the points of crossing aforesaid.

Eighth—All terms, conditions and limitations contained in the orders of the Railroad and Warehouse Commission of the State of Illinois regarding said crossing, in relation to the installation, operation and maintenance thereof, shall remain in full force and effect, except as herein otherwise provided, and especially the provisions contained in said order with reference to the right of the Suburban company to take up and remove the tracks and appurtenances of the Aurora company in case it shall fail to comply with the terms, provisions, conditions and limitations contained in this agreement and in the order of Feb. 21, 1902, as herein modified, shall continue and remain in force the same as though embodied herein.

Ninth—This contract shall extend to the successors, lessees and assigns of the parties hereto, and all persons or corporations claiming through or under them, or either of them, and shall be a contract, the provisions of which shall extend to and inure to the benefit of the properties affected hereby and shall run with such properties.

In witness whereof, this agreement has been executed on behalf of the Suburban Railroad company by L. S. Owsley, its receiver, pursuant to order and direction of the circuit court of Cook county, Illinois, and these presents have beeen executed by the Aurora, Elgin & Chicago Railway company by L. J. Wolf, its president, and attested by Warren Bicknell, its secretary, this 24th day of December, A. D. 1902.

L. S. Owsley.
As Receiver of the Suburban Railroad Company.

The Suburban Railway Co.,
By F. H. Roeschlaub, *President.*

E. C. Veasey, *Secretary.*

The Aurora, Elgin and Chicago Railway Company,
Attest: By L. J. Wolf.
Warren Bicknell, *Secretary.*

Approved:

The Chicago Terminal Transfer Railroad Co.,
Attest: By J. N. Faithorn, *President.*
H. H. Hall, *Asst. Secretary.*

O. K.:
F. E. Paradis.

O. K.:

The Lake Street Elevated R. R. Co.
By Clarence A. Knight, *President.*

Approved:

Railroad and Warehouse Commission of the State of Illinois..
By James S. Neville, *Chairman.*

The Chicago Terminal Transfer Railroad company hereby approves the foregoing contract, so far as the same relates to the crossing with the tracks of the Suburban company over the tracks and right of way of the Chicago Terminal Transfer Railroad company, and consents that the Suburban company shall have the right of way and crossing in lieu of and place of the former crossing of the Suburban company over the tracks and right of way of the Terminal company, subject to the same terms and covenants.

Chicago Terminal Transfer Railroad Company,
Attest: By J. N. Faithorn, *President,*
H. H. Hall, *Asst. Secretary.*

BEFORE THE HONORABLE, THE BOARD OF RAILROAD AND WAREHOUSE COMMISSIONERS OF THE STATE OF ILLINOIS.

In the matter of the objections of the St. Louis Traffic Bureau and other shippers doing business in East St. Louis, to the enforcement of the so-called reconsignment order put in force Nov. 1, 1902, by the Local Freight Agents Association (composed of agents of the several railroads running into East St. Louis) which abrogates rules in force by consent of all parties interested for more than seven years.

OPINION BY NEVILLE, CHAIRMAN.

For seven years prior to the first of November, 1902, the railroad companies doing business in East St. Louis and within the switching limits thereof, had the following rules:

"1. All cars of oats, corn, wheat and rye received, not consigned to elevators or specific track delivery, or so ordered before arrival, will be held on tracks for inspection and sale, until 5:00 p. m. of the day following delivery of notice of arrival. If by that time, cars are ordered to some destination within the yard limits of the company they will be sent to such point without extra charge. If ordered after 5:00 p. m. of the day following notice of arrival, usual switching charges will be collected.

"2. If disposition is not furnished for cars by 5:00 p. m. of the day after delivery of notice of arrival, grain will be stored in public elevator, the usual switching charge being made for handling to elevators.

"3. All cars arriving consigned to some specific point of delivery, or ordered before arrival, will be delivered at point designated on arrival. If ordred from said point after being properly placed, usual switching charges will be made.

"4. Sundays and legal holidays are not to be counted in allowances of free time for reconsignment."

Shortly before November 1, 1902, the several railroad companies gave notice to the shippers and receivers of grain within the switching limits of East St. Louis, that on and after November 1, the following order or rule would be in force:

"Effective November 1, 1902, a regular switching and reconsignment charge, minimum $2 per car, will be made on all commodities reconsigned within the switching limits of St. Louis and East St. Louis."

About that time the shippers and receivers of grain, of East St. Louis, filed with the Railroad and Warehouse Commission a petition protesting against the change in rules, and the adoption of the rule making a charge of $2 on all cars of grain reconsigned within the switching limits of East St. Louis. The case was set for hearing before this board and on the 19th day of November, 1902, the general managers of the several railroads had a meeting at which they passed the following resolution:

"*Resolved*, That the reconsignment charge be assessed on all commodities reconsigned within the switching limits of East St. Louis and St. Louis, when designated to points within such limits only."

Notice of which was never given to the petitioners until the day of trial of this case in St. Louis, about the 25th day of November, and up to that time the evidence shows that the several railroad companies had been charging the $2 reconsignment charge on cars that were reconsigned outside of the switching limits of the city of East St. Louis as well as those within the switching limits.

It is contended by the petitioners, that the charge of $2 for reconsigning grain after it has been delivered to their tracks called "the hold tracks," as provided by their last rule, is an unjust charge and that in view of the fact that it is only charged when reconsignments are made to interchange tracks with other roads, or to elevators or warehouses on their own road, when the said grains are to be unloaded within the switching limits of East St. Louis and are not made when cars are delivered to such interchange tracks for the

purpose of being shipped beyond the switching limits of East St. Louis, is an unjust discrimination. On the other hand, it is contended by the respondents that it is not an unjust discrimination and is within the law laid down by the Supreme Court in the case of the C. & N.-W. R. R. Co. against Stanbor, 87th Ill., 195, and that the same rule has been adhered to in the case of C. M. & N. R. R. Co. against the National Elevator Co., 153d Ill., p. 70. We have examined both cases very carefully and from such examinations are led to believe that the two cases differ on the question of the meaning of the term "reconsignment." The first was a case under penal statute, which is section 3, and is as follows:

"Every railroad corporation which shall receive any grain in bulk for transportation to any place within this State, shall transport and deliver the same to any consignee, elevator, warehouse, or place to whom or to which it may be consigned or directed; *provided*, such person, warehouse or place can be reached by any track owned, leased or used, or which can be used by such corporation; and every such corporation shall permit connections to be made and maintained with its track to and from any and all public warehouses where grain is or may be stored. Any such corporation neglecting or refusing to comply with the requirements of this section, shall be liable to all persons injured thereby for all damages which they may sustain on that account, whether such damages result from any depreciation in the value of such property by such neglect or refusal to deliver such grain as directed, or in loss to the proprietor or manager of any public warehouse to which it is directed to be delivered and cost of suit, including such reasonable attorney's fees as shall be taxed by the court. And in case of any second or later refusal of such railroad corporation to comply with the requirements of this section, such corporation shall be by the court, in the action on which such failure or refusal shall be found, adjudged to pay for the use of the people of this State a sum of not less than one thousand dollars nor more than five thousand dollars for each and every such failure or refusal, and this may be a part of the judgment of the court in any second or later proceeding against such corporation. In case any railroad corporation shall be found guilty of having violated, failed or omitted to observe and comply with the requirements of this section, or any part thereof, three or more times it shall be lawful for any person interested to apply to a court of chancery and obtain the appointment of a receiver to take charge of and manage such railroad corporation until all damages, penalties, costs and expenses adjudged against such corporation for any and every violation shall, together with the interest, be fully satisfied."

The second case is under section 4, which is as follows:

"All consignments of grain to any elevator or public warehouse shall be held to be temporary, and subject to change by the consignee or consignor at any time previous to the actual unloading of such property from the car in which it is transported. Notice of any change in consignment may be served by the consignee on any agent of the railroad corporation having the property in possession who may be in charge of the business of such corporation at the point where such property is to be delivered; and if, after such notice, and while the same remains uncancelled, such property is delivered in any way different from such altered or changed consignment, such railroad corporation shall, at the election of the consignee or person entitled to control such property, be deemed to have illegally appropriated such property to its own use, and shall be liable to pay the owner or consignee of such property double the value of the property so appropriated; and no extra charge shall be permitted by the corporation having the custody of such property, in consequence of such change of consignment."

This is on a different subject, that is, the question of reconsignment of grain before delivery without extra charge or compensation. In the C. M. & N. case, 153 Ill., 84, the courts say:

"And so if in section 3 of the act the word 'consignment' is used in the sense of indicating a consignment made at the time and point of shipment and such consignment only, yet, in section 4 the word 'consignment' seems to have an enlarged sense attached to it, that of denoting a direction or con-

signment to a particular elevator or warehouse at any time prior to the actual unloading of the grain from the cars in which it was transported."

"If that is true, then there is no right in the railroad companies to charge an extra charge in consequence of such reconsignment in addition to the regular freight on said grain. We can see that the receiver of grain might, in the ordinary management of his business not know where he would want his cars of grain delivered until after they were inspected. He might want a car of grain that would inspect one grade at one place, and another grade at another place, where, under the law he has a reasonable time after the grain has been delivered to the place of inspection, and after notice of such delivery to inspect or have the grain inspected, and then direct where it should be delivered, without any additional charge over and above the regular freight on such grain from the point of shipment to the point of delivery, as directed after such inspection. The question then remains as to what is a reasonable time. As will be seen by the old rules above set forth, the respondents themselves prior to Nov. 1st, allowed until 5:00 o'clock p. m. of the day following the delivery of notice of the arrival of the grain, and if by that time cars were ordered to some destination within the yard limits of the city, they were sent there without extra charge; if ordered after 5:00 o'clock p. m. of the day after delivery of notice of arrival, the usual charge was made. In view of the fact that under the old rules the respondents considered that a reasonable time, we hold in this case that is a reasonable time, and the order will be as follows."

It is therefore ordered by the Railroad and Warehouse Commission of the State of Illinois, that all railroads running into and doing business within the city of or switching limits of East St. Louis, shall hereafter allow all shippers or receivers of grain within said district, a reasonable time to direct said railroad companies where to deliver said grain after they have had notice of its arrival within the switching limits of East St. Louis, when said grain is shipped from a point within the State of Illinois to East St. Louis, and that such reasonable time shall be until 5:00 o'clock p. m. the day following delivery of notice of arrival thereof, and that no extra charge shall be made for delivering said grain to any warehouse, elevator or interchange track where said grain is to be delivered within the switching limits of East St. Louis, until after 5:00 o'clock p. m. of the day following the delivery of notice of such arrival to the consignee, receiver, or person entitled to receive said grain.

JAMES S. NEVILLE,
Chairman.
ARTHUR L. FRENCH,
Commissioner.

Springfield, Ill., Jan. 13, 1903.

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

D. H. Curry & Co.

vs.

The Illinois Central Railroad Co.

Complaint of Discrimination, Jan. 29, 1903.

On Dec. 29, 1902, D. H. Curry & Co. filed in the office of the Railroad and Warehouse Commission, complaint against the Illinois Central R. R. Co., for an unjust discrimination against the said D. H. Curry, or the firm of D. H. Curry & Co., in the distribution of grain cars at the town of Mason City,

Mason county, Ill., alleging that they were an elevator company, buying and shipping grain from Mason City, and that there was a company called the Farmers' Grain & Coal Co. of Mason City, who were also engaged in the same line of business, at the same place and that the Illinois Central R. R. Co. furnished a large number of cars to the Farmers' Grain & Coal Co. to ship grain in from Mason City and neglected and refused to furnish cars to the said D. H. Curry & Co. to be used for the same purpose.

The defendant, the Illinois Central R. R. Co. filed its answer Jan. 15, 1903, denying that they unlawfully discriminated against petitioners, D. H. Curry & Co., in the distribution of cars. Said railroad company admitted that they had furnished a large number of cars to the Farmers' Grain & Coal Co. and had furnished very few cars to D. H. Curry & Co., but they defended their action in so doing by alleging that the Farmers' Grain & Coal Co.'s elevator was located on the ground of the Illinois Central R. R. Co., adjacent to the side track of the said railroad company and that the elevators of D. H. Curry & Co. were located on the right of way and adjacent to the side tracks of the Chicago & Alton Ry. Co. and on the further ground that D. H. Curry & Co. had gone into a conspiracy with a number of other grain men or grain companies to prevent the said Farmers' Grain & Coal Co. from getting cars to ship their grain and to prevent commission men and buyers at other markets from buying or handling grain of the Farmer's Elevator's companies and for that reason, the fact that they furnished a great number of cars to the Farmers' Grain & Coal Co. and refused or neglected to furnish cars to D. H. Curry & Co. was not an unlawful discrimination.

The case was set for hearing on Jan. 29, 1903, at the office of the Railroad and Warehouse Commission, in Springfield, Ill., and the parties appeared with a large number of witnesses on each side. The proof shows that for a good many years past D. H. Curry & Co. had been engaged in the elevator business at Mason City; that Mason City is a junction of the Illinois Central R. R. and the Chicago & Alton Ry.; that the elevators of D. H. Curry & Co. were located along the line of the Chicago & Alton Ry. and that the Farmers' Grain & Coal Co. is located on the line of the Illinois Central R. R.; that at certain times in the year it was a great advantage to a shipper to be able to ship their grain over the Illinois Central R. R. and for that reason D. H. Curry & Co. applied for cars and were willing, if cars were furnished them, to haul their grain by teams from their elevators to the Illinois Central side tracks and load it into the cars from wagons and that they had on very many different times done that, but that since November, 1902, they had been unable to secure any cars and although the market for their grain at places where they could ship over the Illinois Central R. R. was from 1 to 3 cents a bushel higher than at markets where they could ship over the Chicago & Alton Ry., they were unable to get cars to ship over the Illinois Central R. R.

The evidence also shows that for many years prior to December, 1900, at the time the Farmers' Grain & Coal Co. began business at Mason City, D. H. Curry & Co. had been in business at Mason City, and that before that time grain sold for from 2 to 3 cents a bushel less at Mason City than at other markets in that vicinity, but that after the Farmers' Grain & Coal Co., began business there grain brought from ½ to 2 cents a bushel more at Mason City than it did at other markets in that vicinity.

The evidence also shows that after the controversy came up about the distribution of cars, that a number of commission companies in the city of Chicago, where the Farmers' Grain & Coal Co. were in the habit of shipping a large amount of grain, and grain buyers at Decatur and other places, where they had shipped some grain, after doing business a short time with the Farmers' Grain & Coal Co., would notify them, the Farmers' Grain & Coal Co., that they were unable to continue to handle their grain, and asked them to ship to some other person or company. This is true in a number of instances. The writers of such letters were witnesses in this hearing, and their excuse for writing such letters and ceasing to do business with the Farmers' Grain & Coal Co., at Mason City was that the Illinois Grain Dealers' Association, an association of which they were members, had, through its special

agent, one A. W. Lloyd, advised them not to handle the grain of the farmers' elevators, and that he had led them to believe that anyone who handled the grain of farmers' elevators would not get to handle the grain of any of the members of the Grain Dealers' Association, and in almost every instance, as will be seen by copies of letters which are made a part of this opinion, they refused to do business with the farmers' elevator companies for the reason that they thought it would be more advantageous to them to handle the business of the members of the Illinois Grain Dealers' Association than it would to handle the business of the farmers' elevators, and that they could not do both.

The following are copies of letters, which are made a part of this opinion:

CHICAGO, ILL., Nov. 22, 1902.

Farmers' Grain and Coal Co., Mason City, Ill.:

DEAR SIRS—For some time past we have been considering the advisability of asking you to change your account to some other house. As you know we are dependent upon the country grain shippers for a living, and in times past have operated country elevators ourselves. We have, therefore, decided not to solicit or handle any grain except from the regular country grain shippers. Hence, we have come to the conclusion that, although our past business has been satisfactory, it is to our financial advantage to have you transfer your account to some other house. We will, therefore, collect for all the grain we have sold for you and get account sales to you just as soon as possible. Yours very truly,

NASH, W. & CO.,
(*Baker.*)

CHICAGO, ILL., Dec. 1, 1902.

Farmers' Grain and Elevator Co., Mason City, Ill.:

GENTLEMEN—Our representative, Mr. White, has reported having had a very pleasant visit with you. In reply to your inquiry whether we would take your account, will say that after considering the matter very carefully we have come to the conclusion that if you will join the Illinois Grain Dealers' Association (which we are satisfied will be to your interest as well as ours) we will be pleased to take your account and handle your shipments to your best possible advantage. Are confident that if you join the association and work in harmony with your competitors the ill feeling now existing will not be so bitter. Have written Mr. Mowry, secretary of the association, the stand we have taken and believe the sooner you send him your application the better it will be for all concerned.

As to the action of today's markets, we will refer you to enclosed market letter and price current. Hoping to hear in the near future that you have joined our ranks, we remain Yours truly,

H. HEMMELGARN & CO.

CHICAGO, ILL., Dec. 15, 1902.

Farmers' Grain & Coal Co., Mason City, Ill.:

DEAR SIRS—In talking with my partners since seeing you yesterday we have decided that inasmuch as we are members of the Grain Dealers' Association, and have subscribed to the rules, we do not feel that it would be honorable to solicit your business and regret very much to have to inform you that we cannot do so.

Very truly yours,

WARNER & WILBUR,
Per J. H. Warner.

CHICAGO, ILL., Dec. 20, 1902.

Farmers' Grain & Coal Co., Mason City, Ill.:

GENTLEMEN—We are very much pleased to receive your favor of yesterday advising shipment of two cars of corn, which will have our best attention on arrival. We are pleased to get this start with you and we hope our sales and manner of handling this consignment will induce a long and pleasant business between us. Our cash corn market was stronger and prices were slightly higher than yesterday. Some report the market as slightly lower but our sales are certainly better than those made for the same quality of corn yesterday. Our cash oat market was also strong and about a quarter cent higher. Samples were in brisk demand. We are firm believers in higher prices for both cash oats and May future. Thanking you for this first shipment, we remain,

Sincerely yours,

Dic. E. W. B. L. H. MANSON & CO.

CHICAGO, ILL., Jan. 6, 1903.

Farmers' Grain & Coal Co., Mason City, Ill.:

GENTLEMEN—For financial reasons we have decided that we cannot accept any more of your business and therefore write you accordingly.

Yours very truly.

FYFE, MANSON & CO.

MASON CITY, ILL., Jan. 7, 1903.

Fyfe, Manson & Co., Chicago, Ill.:

GENTLEMEN—Yours of the 6th received. Please advise what you mean by refusing our business for financial reasons. Is our account with you not satisfactory, or do you think we are not a safe house to do business with, when we are backed by a million or more money. Would thank you very much for an explanation at once.

Respectfully,

FARMERS' GRAIN & COAL CO.,
Per J. A. McCreary.

CHICAGO, ILL., Jan. 9, 1903.

Farmers' Grain & Coal Co., Mason City, Ill.:

GENTLEMEN—We have your favor of the 7th inst., and in reply to same will state that we have no doubt whatever but what your firm is perfectly responsible and good financially for anything that you would do but we have other interests that conflict doing business with you. Enclosed find account sales for the car corn No. 22,660, showing net proceeds of $536.11. This car closes up all the business we have had from you and we herewith enclose check for $160.30 to balance account. Thanking you for past favors and hoping you will call and see us when in the city, we are

Sincerely yours,

Dic. L. H. M. FYFE, MANSON & CO.

DECATUR, ILL., Jan. 9, 1903.

Mason City Farmers' Grain & Coal Co., Mason City, Ill.:

GENTLEMEN—Referring to our conversation by 'phone today, there will be a meeting at Decatur next week for the purpose of talking over some matters of interest and we think it would be a good plan for you to confer with the managers of the New Holland and Easton Farmers' Companies and have your three managers present here and with full power to act for your companies. If you come without power to act it will be a waste of time and expense. The purpose is to adjust all differences between you and the regular shippers in your territory. It is not the purpose of arranging matters so that the farmers will be treated unfairly but in such a way that there will be no injustice to the farmer nor to the regular dealer who has his money invested in the grain business. Some plan must be adopted that will provide for each shipper so that he will be given his share of the business at a reasonable margin of profit. If you can arrange to be present with the authority suggested, we will notify you of the time of the meeting.

Yours truly,

SUFFERN, HUNT & CO.

HAVANA, ILL., Jan. 14, 1903.

Mess. Suffern, Hunt & Co., Decatur, Ill.:

DEAR SIRS—We will say that a number of the dealers flatly refuse to make any terms with the Farmers' Elevator combines at Easton, Mason City and New Holland which you have suggested. We thank you for your efforts in our behalf and can have no objections to you seeking to establish your previous business relations with the parties at the above named stations.

Respectfully,

McFADDEN & Co.

DECATUR, ILL., Jan. 15, 1903.

Mason City Farmers' Grain Co., Mason City, Ill.:

GENTLEMEN—We have been unable to get your opposers to agree to give you a hearing, so we hand you bid herewith. We will meet a committee here tomorrow and will insist upon fair treatment.

Yours truly,

SUFFERN, HUNT & Co.

From the evidence shown, we are led to believe that there was some kind of an understanding between the complainant, D. H. Curry & Co., and members of the Illinois Grain Dealers' Association; that the members of that association, or parties handling the grain of the members of that association, were not to handle any of the grain of the Farmers' elevators. The evidence of Wm. H. Suffern, of Decatur, who was a witness for the defense shows that there was an objection by members of the Illinois Grain Dealers Association to his firm, Suffern, Hunt & Co., of Decatur, sending bids or buying grain from the Farmers' Elevator and that he, Mr. Suffern, of his own motion, undertook to settle that difference and after so doing wrote several letters back and forth between his firm, the Farmers' Grain & Coal Co. at Mason City and McFadden & Co., a firm of grain dealers at Havana, Ill., near Mason City, and it is admitted by Mr. Curry that within a very few minutes after Mr. McFadden received the letter from Mr. Suffern, asking that some adjustment be made by which their firm could send bids to the Farmers' Grain & Coal Co., at Mason City, and just prior to the letter written by Suffern, Hunt & Co., to the Farmers' Grain & Coal Co. stating that it would be of no use for them to some to Decatur to try and adjust their differences, that McFadden had telephoned Mr. Curry all about the correspondence with Suffern, Hunt & Co.

While this is not the strongest evidence that Mr. Curry was a party to the attempt to prevent members of the Illinois Grain Dealers' Association and commission men handling their business from doing business with the Farmers' Grain & Coal Co., it is sufficient to show that Mr. Curry knew what was going on and while it may not be a legal defense to the Illinois Central Railroad Co. in not delivering cars to D. H. Curry & Co., it shows very conclusively that Mr. Curry was willing that anything should be done to prevent the Farmers' Grain and Coal Co. from having a market for its grain and he himself refusing to agree to a conference between the interested parties by which a settlement could be made that would allow the firm of Suffern, Hunt & Co. to send bids to and buy grain from the Farmers' Grain & Coal Co.

The law governing the transportation of grain is as follows: "That every railroad corporation, chartered by or organized under the laws of this State, or doing business within the limits of the same, when desired by any person wishing to ship any grain over its road, shall receive and transport such grain in bulk, within a reasonable time, and load the same either upon its track at its depot or in any warehouse adjoining its track or side track, without distinction, discrimination or favor between one shipper and another, and without distinction or discrimination as to the manner in which such grain is offered to it for transportation or as to the person, warehouse or place to whom or to which it may be consigned."

From this it will be seen that where persons apply for cars to ship grain that it makes no difference whether he is a buyer or a farmer desiring to

ship his own grain; that he is entitled to the same rights with reference to the receipt of cars in shipment of grain, but we think the rule should be that where elevators are located along different lines of roads at junction points, that in the distribution of cars, each railroad should take into consideration the number of cars furnished to the elevator on the other line of road by the railroad on whose line such elevator is situated as well as the number of cars furnished to such elevators by their road, and should distribute the cars equitably according to the whole number of cars received by all roads at such point, in accordance with the amount of grain to be shipped by the different shippers or persons desiring to ship. That seems to be the custom at many junction points within the State, and in our opinion is the proper rule.

It is therefore ordered by the commission that the Illinois Central Railroad Company hereafter distribute cars to D. H. Curry & Co., the Farmers' Grain & Coal Co. and to the F. M. Hubbard Elevator Co., in accordance with the foregoing rule, and that other persons who desire to ship be treated in the same way.

JAMES S. NEVILLE, *Chairman.*
ARTHUR L. FRENCH, *Commissioner.*

Springfield, Ill., April 8, 1903.

ORDER OF THE BOARD OF RAILROAD AND WAREHOUSE COMMISSIONERS IN THE MATTER OF BLOCKING SWITCHES, ETC.

SPRINGFIELD, ILL., April 8, 1903.

At the regular monthly meeting of the Board of Railroad and Warehouse Commissioners of the State of Illinois, held at their office in Springfield, Ill., this 8th day of April, 1903, the matter of the proper protection of all frogs, guard rails and the heels of all switch points by foot guards or blocking, as set forth in their circular letter of Feb. 10, 1903, and the hearing of the case before the board of Feb. 24, 1903, was taken up for final decision.

From the files of the board, as to reports of personal injuries, and from the statements of the construction and operating departments of a large percentage of the railroads of our State, as developed at the hearing, that it is necessary as a measure of protection to the lives or serious injury of persons, more especially of employés in the operating departments of our railroads, that all frogs, guard rails and the heels of all switch points in all switches in this State be protected by foot guards or blocking.

It is therefore ordered, by said Board of Railroad and Warehouse Commissioners, that under the provisions of "An Act to establish a Board of Railroad and Warehouse Commissioners, and prescribe their powers and duties, approved April 13, 1871, in force July 1, 1871, section 11½," and after full compliance with all of its requirements, and being fully advised that it is absolutely necessary for the protection of life and from personal injury to persons in this State, that proper foot guards or blocking be provided for all frogs, guard rails and the heels of all switch points in all switches, and the said Board of Railroad and Warehouse Commissioners, by this its order, do therefore recommend to all corporations, or person or persons, owning or operating all railroads in the State of Illinois, that on or before July 1, 1903, they shall provide suitable foot guards or blocking for all frogs, guard rails and the heels of all switch points in all switches in the State of Illinois.

[Signed] JAMES S. NEVILLE, *Chairman.*
ARTHUR L. FRENCH, *Commissioner.*

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

C. L. Aygarn

vs.

The Illinois Central Railroad Company.

For Discrimination in the Distribution of Cars.

The evidence in this case was taken in the office of the Commissioners at Springfield, Ill., on Feb. 23, 1903.

APPEARANCES:

MAJOR JAMES CONNOLLY, for Complainant.
JOHN G. DRENNAN, for Defendant.

There was a great amount of evidence in the case on the question of unjust discrimination against the complainant in the distribution of cars for shipment of grain at Rooks Creek station and at Rugby station, both in Livingston county, Illinois. After the evidence had all been heard, both parties agreed to continue the case and take depositions at Pontiac, which was done and the evidence all brought into this office for final disposition.

The claim is that the Illinois Central R. R. Co. had unjustly discriminated against the complainant, C. L. Aygarn, in the distribution of cars at the above mentioned stations, but from all the evidence heard in the case we are unable to find anything that we think sufficient on which to base an order against the defendant for discrimination and therefore,

It is hereby ordered by the commission, that the complaint be dismissed.

[Signed] JAMES S. NEVILLE, *Chairman.*
A. L. FRENCH, *Commissioner.*

Springfield, Ill., June 24, 1903.

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

C. L. Aygarn,

vs.

The Wabash Railroad Company.

For Discrimination in the Distribution of Cars.

Complainant in this petition alleged that the defendant on Feb. 6, 1901, and on divers dates and times thereafter, prior to the filing of this complaint, had discriminated against him in the distribution of cars and in freight charges at Rowe station, Livingston county, Illinois. The case was brought for hearing before the commission at Springfield, May 11, 1903.

APPEARANCES:

MAJOR JAMES CONNOLLY, for Complainant.
MCANULTY & ALLEN, for Defendant.

There was a great amount of evidence heard on both sides but the evidence clearly shows that there were three grain shippers at the above station, viz.: Roger, Bacon & Co., complainant C. L. Aygarn and one Whalen. That during the time mentioned, complainant C. L. Aygarn had received more than one-third of the cars loaded at that place. It is true there is some complaint

by Mr. Aygarn that at times when he had grain to ship the defendant's agents would set cars to the other elevators and afterwards turn them over to Mr. Aygarn. This was answered, and I think satisfactorily, that at the times of said complaint Mr. Aygarn had had more cars than the other shippers and in the fair distribution of cars they were entitled to the cars in question, but after the cars had been set out to the other elevators and the companies notified, the said companies did not load the said cars and the agent afterwards notified Mr. Aygarn that he could use the cars, which he did in almost every instance.

From the evidence in the case, we are unable to find that there was any unjust discrimination against the complainant in the distribution of cars.

There is also a complaint that at different times the defendant had overcharged the complainant on grain shipments. One instance, a load of oats shipped from Rowe station to East St. Louis. In that case the evidence shows that they charged the complainant on several thousand pounds more than he actually shipped and that he should be paid back. There were also three car loads of grain shipped to Louisville, by way of the B. & O. S.-W. R. R., all of the Wabash's portion of the haul was in the State of Illinois and there was a separate charge for the freight on the Wabash and the freight on the B. & O. S.-W. R. R., and it was admitted at the trial by the freight agent of the defendant company, the Wabash R. R., that the company had charged 2 cents a 100 pounds more than was right on those cars of grain and that the complainant should have it back.

It is hereby ordered by the commission, as to that part of the petition charging a discrimination in the distribution of cars, that it is not well taken, and as to that part we find for the defendant, but, as to the question of freight charges on the above mentioned shipments, we hold that the defendant, the Wabash Railroad Co., has overcharged the complainant and we order that the amount overcharged be paid back to the complainant.

[Signed] JAMES S. NEVILLE, *Chairman.*
A. L. FRENCH, *Commissioner.*

Springfield, Ill., June 24, 1903.

The Shirley Farmers' Grain & Coal Co.,

vs.

The Chicago & Alton Ry. Co.

Petition for track connection at Shirley, Ill.

Petition was filed in the above entitled case before this commission, June 11, 1903, and site viewed on June 15, 1903.

Demurrer was filed to the petition on that day, alleging that the petition was prematurely filed for the reason that there was no elevator then in existence. Demurrer was sustained on the above ground.

Petition filed Sept. 4, 1903, asking leave to file amended petition. Leave granted and amended petition filed that day. Case set for hearing Sept. 12, 1903, at the office of the Railroad and Warehouse Commission in Springfield, Ill.

APPEARANCES:

Bracken & Ewing for the petitioner, William Brown for defendant, and Judge Thomas F. Tipton appeared for J. L. Douglas opposing the order for permission to connect.

On the trial the evidence showed clearly that the petitioner had constructed an elevator adjoining the right of way of the Chicago & Alton Railway Company's tracks at Shirley, Ill., within 50 feet of the main track of said railway company. That there was no other railroad in that vicinity with which they could connect a side track for the purpose of receiving and delivering grain and coal.

The evidence showed further that their elevator was now completed and ready to do business and that when the track was connected with the track of the said Chicago & Alton Ry. Co., they could receive and ship grain and coal, the grain that would be stored in their elevator, and the coal for sale at their elevator and in their coal houses.

The defense was that their elevator was not a public elevator within the meaning of the statutes and for that reason they were not entitled to a connection with the said railway company.

The statute is as follows, section 134:

"That public warehouses as defined in article 13 of the Constitution of this State shall be divided into three classes, to be designated as classes A, B and C respectively."

Section 135, "Public warehouses of class A shall embrace all warehouses, elevators and granaries in which grain is stored in bulk and in which the grain of different owners is mixed together, or in which grain is stored in such manner that the identity of different lots or parcels cannot be accurately preserved, such warehouses, elevators or granaries being located in cities having not less than 100,000 inhabitants. Public warehouses of class B shall embrace all other warehouses, elevators or granaries in which grain is stored in bulk and in which the grain of different owners is mixed together. Public warehouses of class C shall embrace all other warehouses or places where property of any kind is stored for a consideration."

It seems from the reading of these statutes that there can be no question that the above mentioned warehouse or elevator is a public warehouse. The evidence showing conclusively that it is built for the purpose of receiving, storing and shipping grain, coal and other materials generally used in that kind of business, from said elevator at Shirley, Illinois.

The statute, section 120 is as follows:

"Every railroad corporation which shall receive any grain in bulk for transportation to any place within the State, shall transport and deliver the same to any consignee, elevator, warehouse or place to whom or to which it may be consigned or directed: *Provided*, such person, warehouse or place can be reached by any track owned, leased or used, or which can be used by such corporation; and every corporation shall permit connections to be made and maintained with its track to and from any and all public warehouses where grain is or may be stored. Any such corporation neglecting or refusing to comply with the requirements of this section, shall be liable to all persons injured thereby for all damages which they may sustain on that account, whether such damages result from any depreciation in the value of such property by such neglect or refusal to deliver such grain as directed or in loss to the proprietor or manager of any public warehouse to which it is directed to be delivered and cost of suit, including such reasonable attorney's fees as shall be taxed by the court. And in case of any second or later refusal of such railroad corporation to comply with the requirements of this section, such corporation shall be by the court, in the action on which such failure or refusal shall be found, adjudged to pay for the use of the People of this State, a sum not less than $1,000 nor more than $5,000 for each and every failure or refusal, and this may be a part of the judgment of the court in any second or later proceeding against such corporation. In case any railroad corporation shall be found guilty of having violated, failed or omitted to observe and comply with the requirements of this section or any part thereof, three or more times, it shall be lawful for any person interested to apply to a court of chancery and obtain the appointment of a receiver to take charge of and manage such railroad corporation until all damages, penalties, costs and expenses adjudged against such corporation for any and every violation shall, together with interest be fully satisfied."

It would seem from the statutes that the petitioners, who are a corporation and doing business as an elevator company—buying, receiving, storing and selling and shipping grain and coal, are entitled under the above section to be permitted to connect and maintain a connection with the track of the Chicago & Alton Ry. Co. at or near its said elevator at Shirley, Illinois.

It is therefore ordered by the commission that the Shirley Farmers' Grain & Coal Company be permitted to make connections with the track of the

Chicago & Alton Ry. Co. at a convenient point near their elevator at Shirley, Illinois, for the purpose of receiving and shipping grain and coal and other materials, as provided by the statutes and constitution of the State of Illinois; and that in making said connection, that they shall do the same in a way that will not unnecessarily interfere with the tracks and traffic of said Chicago & Alton Ry. Co. That they shall give reasonable notice to the said Chicago & Alton Ry. Co. of their intention so to do.

It is further ordered by the said Railroad and Warehouse Commission that if the said Chicago & Alton Ry. Co. desire to make an extension of their side track at Shirley, the south end of which is about 1,000 feet north of the above company's elevator, that they shall have the right to do so, and that the Shirley Farmers' Grain & Coal Company shall pay for said connection, a reasonable cost of constructing and connection and switch of the proper length to enable them to do their business properly at their said elevator.

[Signed] J. S. NEVILLE, *Chairman.*
A. L. FRENCH, *Commissioner.*

Springfield, Ill., Sept. 22, 1903.

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

Chicago, Milwaukee & St. Paul Railway Company, Complainant,

vs.

Freeport Railway, Light and Power Company, Respondent.

Crossing Case.

FINDINGS AND DECISIONS OF THE COMMISSION.

JAMES S. NEVILLE, Chairman.

On Oct. 20, 1903, the complainant, Chicago, Milwaukee & St. Paul Railway Company, duly filed with the commission its verified petition, alleging in substance that it was a railway corporation owning and operating a line of steam railroads into and through the city and township of Freeport, in Stephenson county, Illinois, over which it was a common carrier of freight and passengers; that the respondent, Freeport Railway, Light and Power Company was a corporation organized and existing under the laws of Illinois, and owning and operating by electric motive power a railroad extending along and upon certain streets of said city and certain public highways of said township, over which it was a common carrier of passengers, freight and express, under authority and permission from the city council of said city and the board of supervisors of said county, respectively; that said electric railroad intersected and crossed at grade the steam railroad track of complainant, upon a public highway of said township commonly called Shawnee street, and just outside of the city limits; that the location, grade and curves of both said tracks were such as to make a surface crossing at that place unavoidably and extremely dangerous to life and property; that a safe and practicable overhead crossing could be made in the vicinity, and that the complainant had at all times objected to and protested against such grade crossing, without avail; said petition prayed that the board would hear the matter, and determine and order the place where and the manner in which such crossing should be made, and particularly would forbid respondent from continuing to cross at grade in said Shawnee street.

The commission thereupon assumed jurisdiction of the matter of said complaint, and set the case for hearing at the office of said Railroad and Ware-

house Commission in the city of Chicago, Ill., on Oct. 31, 1903, at 9:00 o'clock a. m., and caused due and legal notice thereof to be given to said respondent company.

At the time and place fixed for said hearing the parties appeared; complainant being represented by its solicitor, and the respondent by Judge S. P. Shope, its solicitor; and thereupon respondent's solicitor requested an adjournment of the hearing to a later day, in order to give him further time to look into the case, which request was granted by the board, and the hearing was thereupon duly adjourned to Nov. 13, 1903, at 9:00 a. m., at the same place.

Afterwards, on Nov. 13, 1903, the board met at the place and hour appointed and again called said case for hearing; the complainant appearing by Charles B. Keeler, its solicitor, and respondent's solicitor, Judge S. P. Shope and Alpheus J. Goddard, its secretary being also present, but declining to enter formal appearance or make answer in said cause and objecting to the jurisdiction of the board. Thereupon the board held that it had jurisdiction of the parties and subject matter of this proceeding, and received and heard the oral and documentary evidence offered therein.

The statute of Illinois (Act of May 27, 1889) provides: "That hereafter any railroad company desiring to cross with its tracks the main line of another railroad company, shall construct the crossing at such place and in such manner as will not unnecessarily impede or endanger the travel or transportation upon the railway so crossed. If in any case objection be made to the place or mode of crossing proposed by the company desiring the same, either party may apply to the Board of Railroad and Warehouse Commissioners and it shall be their duty to view the ground, and give all parties interested an opportunity to be heard. After full investigation, and with due regard to safety of life and property, said board shall give a decision prescribing the place where and the manner in which said crossing shall be made, etc."

The respondent is a corporation organized under the laws of Illinois, with power to generate, distribute and sell electrical current for lighting, heating, power and other purposes; and to construct, own, operate and maintain a street railway in Freeport and vicinity to be operated by electricity or other motive power. The franchise from the county board of supervisors, under which it is maintaining and operating its electric railroad along the township highway and over the crossing in question, expressly authorizes it to do a passenger, freight, mail and express business. Its track is required to be of standard gauge and laid with T rails. It must be assumed that the company will exercise all the powers granted to it.

Lieberman vs. *Chgo. Rapid Transit R. R. Co.*, 141 Ill., p. 152.
Goddard vs. *C. & N. W. Ry. Co.*, 104 Ill. App., p. 532-3.

Is the respondent a "railroad company" within the intent and meaning of the above statute? As early as 1859 the Supreme Court of Illinois referred to street railroads as falling within the general designation of "railroads," and held that the mere difference in motive power did not effect such classification.

Moses vs. *P. F. W. & C. R. R. Co.*, 21 Ill., p. 522-3.

In 1860 the court held that a statute authorizing all railroads incorporated in the State, to connect and make running arrangements with each other, included horse as well as steam railroads, saying:

"This language is manifestly sufficiently comprehensive to embrace horse railways as well as railroads whose cars are propelled by steam or other power, as well as roads authorized to transport passengers only, as roads authorized to transport passengers and freight by other power. The language of the enactment embraces all roads then organized, as well as those which might afterwards become so and the Act makes no distinction, or reservation as to the character of the railroad. The members of the General Assembly were fully aware that these various roads existed, and if any roads answering either description, were not designed to be embraced, they would, it appears to us, have limited the operation of the Act so as to have excluded them. Horse city railways unquestionably fall within the description of

the class of subjects of which they were legislating. They are, in every sense of the term, railroads; they are incorporated under the laws of the State, and are embraced within the language of the statute, and we have no doubt within its spirit."

City of Chicago vs. *Evans*, 24 Ill., p. 55-6.

In 1892 the same court, construing an Act for the organization of corporations for the purpose of constructing and operating any railroad in this State, held that it also included elevated railroads, saying:

"We are able to perceive no reasons why the word 'railroad' as here used, should not be construed to apply to elevated railroads as well as to any other."

Lieberman vs. *Chicago Rapid Transit R. R. Co.*, 141 Ill., p. 147.

And in considering the status of an electric street railroad, under the statutes of Illinois, the United States Circuit Court of Appeals for the Seventh Circuit, said:

"The fact that its trains are to be operated by electricity instead of steam, does not effect its place in the laws of the State as a railroad company."

Malott, Receiver, vs. *Electric Ry. Co.*, 108 Fed. Reporter, p. 318.

In New York it was held that the crossing of steam railroads by electric street railways, came within the statute of that state providing for the appointment of commissioners to determine the manner in which railroads should cross each other. The language of the statute was, "every railroad corporation," and it was held to include electric street railways as well as steam railroads.

Elec. R. R. Co. vs. *Rapid Transit R. R. Co.*, 24 N. Y. Supp., 566 affirmed in 144 N. Y., 445.

In 1902, the New York Court of Appeals in an elaborate opinion, held that a statute requiring "every railroad corporation" whose road was intersected by any "new railroad," to unite with the latter in providing necessary intersections and facilities, was applicable to electric street surface railroads crossing steam railroads, and vice versa. This decision is directly in point.

St. Ry. Co. vs. *B. & M. R. R. Co.*, 64 N. E. Reporter, 511.

In Pennsylvania, the Act of 1871 empowered Court of Equity to prevent one "railroad company" crossing the tracks of another at grade, if reasonably practicable to avoid a surface crossing, and the Supreme Court held that the statute applied to electric street railroads seeking to cross at grade the tracks of a steam railroad.

Pa. R. R. Co. vs. *Braddock Elec. Ry. Co.*, 25 Attl. Reptr., 780; s. c. 152 Pa. St., 116.

In Iowa, it was held that a statute regarding the appropriation of right of way for "railroad" companies, applied to horse as well as steam roads. The court quote and approve *City of Chicago* vs. *Evans*, 24 Ill., 52, *supra.*

City of Clinton vs. *Ry. Co.*, 37 Iowa, 61.

In Vermont, a street railway company authorized to carry freight and passengers was held to be a railroad company within the meaning of the statute regulating the crossing or connection of one "railroad" by another.

R. R. Co. vs. *St. Ry. Co.*, 50 Atl. Reptr., p. 637.

In Wisconsin, it is held that electric street railroads carrying passengers, freight, mail and express matter, and running upon country as well as city highways, (like the respondent in this case), was to all intents and purposes an ordinary commercial railroad.

R. R. Co. vs. *Elec. R. R. Co.*, 95 Wis., 561.

Zehren vs. *Elec. Rl. & Light Co.*, 99 Wis., 83.

This question was before the former board, in a similar crossing case, and it was there held that an electric railway was a "railroad" within the meaning of the statute. (*C. & A. Ry. Co.* vs. *Alton Ry. & Ill. Co.* Decisions of the Commission, Vol. 1, p. 337). The board has also assumed jurisdiction in later cases, over like crossing of electric railroads with steam roads. Under the above authorities we see no reason to change our former holdings in that respect.

No valid reason can be urged why electric railroads running upon country highways and doing a passenger, freight, mail and express business, should not come within the purview of the above statute. They are common carriers, doing a general transportation business, and substantially like ordinary commercial railroads, except as to motive power and some other details. The plain object and spirit of the statute was to secure protection to persons and property at railroad crossings, and it is clear that the danger of accident is just as great in the one case as in the other. Indeed, electric roads often run at greater speed in the country than ordinary railroad trains; collisions between steam and electric cars are becoming more frequent, and are often attended with great loss of life and property. The dangers intended to be guarded against by the statute are precisely the same in the case of this crossing as in any other railroad crossing. How such dangers arise—that is, from what particular kind of motive power or cars—is manifestly immaterial. The statute should be so interpreted as to carry out its plain object and intent, and we therefore hold that it confers upon this board jurisdiction over the subject matter of the present controversy and that jurisdiction of the parties has been duly acquired.

Before considering the merits, it is necessary to state the prior proceedings relative to this crossing, as disclosed by the evidence. In June, 1901, Alpheus P. and Alpheus J. Goddard applied for and procured from said board of supervisors a franchise to construct and operate an electric street railway for the transportation of passengers, freight, mail and express upon said township highway, known as Shawnee street, and were about to lay their track at grade, over the crossing in question, when said Chicago, Milwaukee & St. Paul Railway Company (complainant herein), on Nov. 18, 1901, filed with this board its verified petition against said Goddards, setting up the dangerous character of such proposed crossing, and praying that the commission would determine and prescribe the place and manner of crossing, as provided by the statute. The board fixed a time and place for the hearing, duly notified the parties thereof, and on Nov. 21, 1901, personally visited and inspected the grounds in company with both parties. Afterwards, on Dec. 2, 1901, said A. P. and A. J. Goddard filed their bill in equity and procured from the circuit court in Stephenson county a temporary writ of injunction, without notice, restraining said C., M. & St. P. Ry. Co. from interfering with or preventing such grade crossing of its track at that place, and under cover of such injunction put in the present crossing and began to operate the same. Afterwards, on Dec. 5, 1901, and at the time and place previously fixed, this board publicly heard the matter of said complaint (the Goddards having appeared and filed their sworn answer, setting up that they had a good defense on the merits, and the commission has no jurisdiction), and after hearing the evidence, found that such proposed grade crossing was unnecessarily dangerous and would unnecessarily impede and endanger the travel and transportation upon petitioner's steam railroad, and that the proper and safe place and manner of crossing would be at another highway and by an overhead bridge; and this board thereupon duly ordered said Goddards not to cross petitioner's track at grade in said Shawnee street, but overhead and at Adams street, upon an existing highway bridge, and gave due notice of such finding and order to said Goddards, as more fully appears by reference to the record of the board in that case.

That afterwards such proceedings were had in the injunction suit that said circuit court of April 4, 1902, dissolved the injunction and dismissed said bill for want of equity, but ordered that the preliminary injunction should remain in force pending an appeal by the Goddards, then prayed and allowed: That such decree was afterwards appealed to and affirmed by the appellate court for the Second district, (*Goddard et al* vs. *C., M. & St. P. Ry. Co.*, 102 Ill., App., 533) and on April 24, 1903, was finally affirmed by the Supreme Court of Illinois upon further appeal (*A. P. Goddard et al* vs. *C., M. & St. P. Ry. Co.*, 202 Ill., 452): And that on or about June 20, 1903, the precendo and mandate of said Supreme Court was filed in the circuit court of Stephenson county, and said suit was thereupon ended and said injunction was finally dissolved.

It further appears that on January 13, 1903, and pending their above appeals, said Alpheus P. and Alpheus J. Goddard with one Wm. N. Conkrite, organized a corporation under the laws of Illinois, called the "Freeport Electric Company" with power to acquire, own and operate a line of electric street railroad in the city and the township of Freeport, and also to generate, distribute and sell electrical current for light, heat and power purposes: On May 27, 1903, its name was duly changed to "Freeport Railway, Light & Power Company" (the present respondent) and on June 1, 1903, said Goddards sold and by deed conveyed to said "Freeport Railway, Light & Power Company" this electric railroad, together with all property, rights, grants and privileges of said Goddards under franchises of said city and board of supervisors, so that said last named company became and still remains the owner of the electric road in controversy and continues to operate it along Shawnee street and over said crossing at grade, as before: Alpheus P. Goddard is the president and Alpheus J. Goddard is the secretary of the new company, and both are directors.

We therefore find that the present complainant has prosecuted this proceeding with due diligence, and that the rights of the parties are the same as if the existing crossing at this place had not been previously put in, but was in contemplation. It is clear that respondent had legal notice of the foregoing facts.

Coming now to the merits of the controversy, it appears that this crossing is in precisely the same condition as when the board visited and inspected the ground, except that the electric track is in and being operated. In all other respects the situation is the same, as conceded by the parties and shown by the photographs and other evidence. The commission did not, therefore, deem it necessary to again visit the place.

The evidence establishes that this grade crossing is exceedingly dangerous to life and property. Seventy-one feet of complainant's right of way including its railroad track, lie outside of the city limits, and cross the township highway known as Shawnee street, at right angles. In approaching this crossing from the south the steam railroad curves sharply near the crossing, and also descends by a heavy grade for a distance of about 3,000 feet to the crossing itself; this grade is about 1 4-10 per cent at first, and then increases to 1 9-10 per cent, or about 100 feet to the mile, for the last 900 feet of that distance, making it very difficult under the most favorable conditions, and with heavy or fast trains practically impossible to stop in time to avoid collisions at such crossing. Just north, and only about 100 feet or so distant from this crossing, complainant's track passes under the elevated roadway and tracks of the Illinois Central Railroad Company, through a narrow opening 13 feet wide, and then curves sharply to the west, on an ascending grade. This elevation is a solid earth embankment, (except at such narrow subway) about 20 feet in height, and extends in a slightly southeasterly direction, completely shutting off the view of Milwaukee trains approaching from the north, until they emerge from the subway and are close to the crossing. Such trains must attain considerable speed and momentum before passing under this Illinois Central embankment in order to climb the heavy grade to the south, so that the engineer cannot see this highway crossing and approaching electric cars, or check his speed, in time to avoid threatened collisions. Experiments made by a locomotive engineer show that when entering the north end of the subway, coming south, he can only see about 15 feet on each side of the Milwaukee track at this crossing, and then it is too late to stop or materially check the speed of the train. It is obvious that if an electric car should become derailed, or the trolley disconnected, upon or close to this crossing, a serious accident is liable to occur at any time.

And the danger is still further increased by the location and grade of the public highway and electric track thereon. Approaching the crossing from the west or city side, this highway and track descend to about the crossing itself, and then slightly ascend and curve, running parallel to and near the southerly side of said Illinois Central elevated embankment, for several hundred feet, when both highway and electric track turn sharply north and pass under said high enbankment. As electric cars run in both directions, the

risk of accident at this crossing is almost equally great from both approaches. The photographs, plates, profiles and oral evidence abundantly show that this surface crossing is exceptionally dangerous.

The electric road comes east on Empire street to its termination near the city limits, then turns north on Bauscher street to Adams street, thence northwest on Adams to Chippewa street, thence north on Chippewa to Shawnee street, and then east on said Shawnee street down to and over the crossing in question. Empire street is five blocks south of this crossing and the intersection of Bauscher and Adams streets is three blocks south. From either point the engineer's surveys show three feasible and practicable routes across complainant's right of way and track, by overhead bridges at favorable points where the steam railroad lies in a long cut and thence to the highway called Arcade avenue on the east side, extending directly to the electric underground crossing of the Illinois Central tracks. One of these routes is by the way of Adams street which now crosses complainant's track by an overhead bridge, and the others require the erection of overhead bridges, but are shorter in distance and more direct. All the routes require less grades for operation than some of those now existing on respondent's line of road in the city of Freeport. It is possible to cross overhead at any other point south of the present Shawnee street crossing, if desired. For most of the distance to Adams street, the land is vacant and unimproved for several hundred feet on each side of complainant's track.

The policy and wisdom of avoiding grade crossings wherever practicable is peculiarly applicable to the present situation, as disclosed by the proofs and by personal inspection of the ground by this board.

For the above reasons we find and hold that the present crossing at Shawnee street is necessarily and extremely dangerous, and will unnecessarily impede and endanger the travel and transportation upon complainant's railroad, and also endanger that upon the electric railroad of respondent itself. That the proper and safe manner of crossing is by an overhead bridge, and the proper place thereof is at said Adams street, or at some point between there and Shawnee street, as respondent may select.

It is therefore ordered by the board that the respondent—Freeport Railway, Light & Power Company—cross with its electric track or tracks over the railroad track and right of way of said Chicago, Milwaukee & St. Paul Railway Company, near Freeport, Ill., by an overhead bridge crossing, and at the public highway known as Adams street, or at some point between said Adams street and Shawnee street, to be selected by respondent in writing, filed with the board within 30 days from the filing of this decision. Such overhead crossing to leave 22 feet in the clear between the top rails of complainant's track and the lower part of the superstructure of said bridge. And said Freeport Railway, Light & Power Company is hereby ordered not to cross or continue to cross at grade in said Shawnee street.

It is further ordered that said respondent—Freeport Railway, Light & Power Company—pay the entire costs of the construction and maintenance of such overhead crossing, including approaches; and that respondent also pay the costs of this proceeding before the commission.

Dated at Springfield, Ill., this 30th day of November, A. D. 1903.

[Signed.] J. S. NEVILLE, *Chairman.*
ARTHUR L. FRENCH, *Commissioner.*

PROTECTION OF FROGS, GUARD RAILS, HEELS OF SWITCHES, ETC.

SPRINGFIELD, ILL., April 8, 1903.

At the regular monthly meeting of the Board of Railroad and Warehouse Commissioners of the State of Illinois, held at their office in Springfield, Illinois, this 8th day of April, 1903, the matter of the proper protection of all frogs, guard rails and the heels of all switch points by foot guards or blocking, as set forth in their circular letter of Feb. 10, 1903, and the hearing of the case before the board on Feb. 24, 1903, was taken up for final decision.

From the files of the board, as to reports of personal injuries, and from the statements of the construction and operating departments of a large percentage of the railroads of our State, as developed at the hearing, that it is necessary as a measure of protection to the lives or serious injury of persons, more especially of employés in the operating departments of our railroads, that all frogs, guard rails and the heels of all switch points in all switches in this State be protected by foot guards or blocking.

It is therefore ordered by said Board of Railroad and Warehouse Commissioners that under the provisions of "An Act to establish a Board of Railroad and Warehouse Commissioners, and prescribe their powers and duties" (approved April 13, 1871, in force July 1, 1871), section 11½, and after full compliance with all its requirements, and being fully advised, that it is absolutely necessary for the protection of life and from personal injury to persons in this State, that proper foot guards or blocking be provided for all frogs, guard rails and the heels of all switch points in all switches, and the said Board of Railroad and Warehouse Commissioners by this, its order, do therefore recommend to all corporations, or person or persons owning or operating all railroads in the State of Illinois, that on or before the 1st day of July, 1903, they shall provide suitable foot guards or blocking for all frogs, guard rails and the heels of all switch points in all switches in the State of Illinois.

[Signed] JAMES S. NEVILLE,
ARTHUR L. FRENCH,
Commissioners.

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

The Chicago & Alton Railway Company

vs.

St. Louis & Springfield Railway Company.

This cause coming on again to be heard upon the petition and objections of the Chicago & Alton Railway Company to the place and manner of crossing the right of way and railroad main tracks of said The Chicago & Alton Railway Company by the tracks of the said St. Louis & Springfield Railway Company, said The Chicago & Alton Railway Company, appearing by F. S. Winston, its general solicitor, and it appearing that said St. Louis & Springfield Railway Company has submitted to the jurisdiction of this board and filed its answer herein, and this board having viewed the ground and given all parties interested an opportunity to be heard, this board, after full investigation and with due regard to the safety of life and property, hereby decides that said St. Louis & Springfield Railway Company shall cross the right of way and railroad main tracks of The Chicago & Alton Railway Company by means of a subway or under-crossing, and

It is therefore ordered as follows:

1. That said St. Louis & Springfield Railway Company shall cross the right of way and main railroad tracks of The Chicago & Alton Railway Company at Carlinville, in the county of Macopin, in the State of Illinois, at the place shown on the blue print attached to Exhibit "A" to the petition of said The Chicago & Alton Railroad Company.

2. That said crossing shall be made by means of a subway, and that the same shall be constructed by the said St. Louis & Springfield Railway Company.

3. That said subway or under-crossing shall be made without disturbing or changing the grade of the tracks of said The Chicago & Alton Railway Company, and said subway shall be provided with necessary stone or concrete abutments, carrying the track of the said The Chicago & Alton Rail-

way Company on a steel bridge of the standard of construction of said The Chicago & Alton Railway Company for bridges of such length. The said subway and bridges shall be constructed in such manner as not to unnecessarily interfere with the operation of the trains, engines and cars of said The Chicago & Alton Railway Company over the same during the period of such construction. Said St. Louis & Springfield Railway Company shall furnish all necessary false work for the purpose of supporting the tracks of The Chicago & Alton Railway Company during such construction. The width between the walls of the subway shall be sufficient to provide for one or two tracks of the St. Louis & Springfield Railway Company, but not to exceed two tracks, and the head-room in said subway shall be such as the said St. Louis & Springfield Railway Company may desire, not, however, exceeding twenty (20) feet. The said subway and the abutments and bridges thereof shall be constructed in a good and workmanlike manner and to the satisfaction of the engineer of this board.

4. That the said The Chicago & Alton Railway Company shall pay said St. Louis & Springfield Railway Company, when said work is completed, the sum of three thousand dollars ($3,000), and the remainder of the cost of such work shall be borne and paid by said St. Louis & Springfield Railway Company.

5. The board hereby reserves to itself jurisdiction of the parties hereto and of the subject matter hereof until the full completion of the said under-crossing, subway and bridges, for the purpose of carrying into full force and effect the terms and provisions of this order, with the right to enter upon, by its agents or employés, the rights of way of the respective parties hereto to take up and remove any part of said work, in case same shall fail to comply with the orders and directions of the board with reference thereto, either as herein prescribed or as prescribed in the future. All expense of so doing shall be borne by said St. Louis & Springfield Railway Company.

6. That the terms, provisions and conditions of this order shall apply and be binding upon the respective successors, lessees and assigns of the parties hereto.

7. It is further ordered that said St. Louis & Springfield Railway Company forthwith pay the costs of this proceeding, which said costs shall be paid prior to said company entering upon the right of way of the Chicago & Alton Railway Company for the purpose of constructing said subway.

8. That said subway or under-crossing shall be completed on or before July 1, 1905, unless the chairman of this board shall for good cause extend the time of completion, or same shall be delayed by strikes, accidents or other causes interefering with the progress of the work.

[Signed] J. S. Neville.
A. L. French,
I. L. Ellwood

Approved this 6th day of October, 1904.

St. Louis, Mo., Oct. 8, 1903.

Gentlemen—I herewith attach notice this day served on the members of the Merchants' Exchange Weighing Committee, and you are hereby notified that inasmuch as the law of our State provides that our weighmasters and assistants shall supervise and have exclusive control of the weighing of all grain, subject to inspection within the limits of the citw of East St. Louis, Ill., and St. Clair county, and that their certificate shall be conclusive between all parties interested; that we will not submit to the Merchants' Exchange having weighmasters to weigh or supervise the weighing of grain inspected or to issue certificates on same, and you are hereby notified not to permit said weighmasters to in any way interfere with our weighmasters or to assume to act as weighmasters of grain subject to inspection at your elevator.

Very respectfully,
William Kilpatrick,
Secretary.

St. Louis, Mo., Oct. 9, 1903.

Weighing Committee of Merchants' Exchange, St. Louis, Mo.:

Gentlemen—Referring to your conversation with our board this evening with reference to your weighmasters supervising the weights of grain inspected by our inspectors in East St. Louis, Ill., and St. Clair county, and the issuing of weight certificates, our board, after a conference, decided that inasmuch as the statutes provide that our weighmasters shall supervise and have exclusive control of the weighing of grain inspected, that you must immediately withdraw your weighmasters from all warehouses where grain is inspected within the limits of East St. Louis and St. Clair county, and you must cease issuing weight certificates, and you are hereby notified of said decision, and to abide by the same. Yours respectfully,

J. S. Neville,
Chairman.

Before the Honorable, the Board of Railroad and Warehouse Commissioners of the State of Illinois.

Chicago & Northwestern Railway Co., Petitioners.

vs.

Wisconsin Central Railway Co., Respondent.

In the matter of the petition of the Chicago & Northwestern Railway Company with respect to the protection by interlocking of the crossing of its tracks by the track of the Wisconsin Central Railway Company at Desplaines, Ill.:

And now, having heard the evidence which has been introduced by the said petitioner and said respondent, and the arguments of counsel, and having considered the same, the commission finds that the public good requires that the said crossing be protected by interlocking and that the interlocking plant at said crossing, which was constructed in the year A. D. 1893, and has been in operation from that time until the destruction of the interlocking tower at said crossing in March, A. D. 1904, should be re-established and rebuilt and hereafter operated by the said petitioner and said respondent.

It is thereupon ordered that said Chicago & Northwestern Railway Company and said Wisconsin Central Railway Company shall at once proceed to rebuild said interlocking tower so destroyed by fire in March, A. D. 1904, and replace the interlocking devices at said crossing in manner and form as shown upon the plan which is attached to said petition of said Chicago & Northwestern Railway Company marked Exhibit "C," and that the said plan for the reconstruction of said interlocking plant at said crossing be and the same is hereby approved; and that the said petitioner and said respondent shall cause the said interlocking plant to be so reconstructed in accordance with said plan within sixty days from and after the date of this order.

It is further ordered that the said petitioner and said respondent shall each pay one-half of the cost of the reconstruction of said interlocking plant, as hereinabove ordered and prescribed and that the cost and expense of maintaining and operating the said interlocking plant, when the same shall be reconstructed and put in operation shall be divided between said petitioner and said respondent in the manner and form in which the cost of maintenance and operation of said plant was divided between said two companies prior to the destruction of said interlocking tower, namely, that the said Chicago & Northwestern Railway Company shall pay seven (7) per cent of the cost of maintenance and operation of said plant and the said Wisconsin Central Railway Company shall pay ninety-three (93) per cent thereof.

[Signed] J. S. Neville,
Chairman.

Springfield, Ill., July 22, 1904.

BEFORE THE BOARD OF RAILROAD AND WAREHOUSE COMMISSIONERS OF THE STATE OF ILLINOIS.

Southern Railway Company

vs.

Louisville & Nashville Railroad Company.

E. C. KRAMER, for Petitioner.
J. M. HAMILL, for Respondent.

Petition for protection of crossing near Belleville, St. Clair county, Illinois.

Finding and decision of the commission by James S. Neville, chairman.

On June 20, 1904, the Southern Railway Company, by Judge E. C. Kramer, its attorney, filed a petition with the commission, to which is attached a copy of a certain contract or agreement entered into between the Southern Railway Company and the Louisville & Nashville Railroad Company, of date the 26th day of October, 1902, in which the above named companies covenant and agree to a certain style of interlocking plant for the protection of the crossing of railroads of said companies at a point near the Crescent Nail Mill at North Belleville, Illinois, and the location and mode of operation thereof, as more fully described in a blue print attached and made a part of this petition.

The contract also prescribes the manner of operation and assigns the amount to be paid by each of said companies for the installation of said interlocking plant and designates which company shall bear the cost of maintenance.

The petition of the Southern Railway Company further prays that the commission approve the contract and enter an order for the installation of the interlocking plant and its operation as described in the petition and contract.

On July 6, 1904, the commission viewed the crossing, at which time both companies interested were represented and suggestions were made as to changes in the arrangement of tracks, the engineer of the Southern Railway Company to submit the blue print showing conditions as they would appear under the new arrangement.

On July 22, 1904, new plans were submitted and with some amendments were approved.

ORDER.

It is ordered by the Board of Railroad and Warehouse Commissioners of the State of Illinois that the prayer of the petitioner, the Southern Railway Company, be granted and that the contract entered into by and between the Southern Railway Company and the Louisville & Nashville Railroad Company, for the protection of the crossing of said companies' tracks, near the Crescent Nail Mill at North Belleville, Ill., be approved, subject, however, to the changes in track arrangement suggested by the commission and amendments to track connections, as shown on blue print submitted by the Southern Railway Company and approved by the consulting engineer of the commission, dated July 22, 1904.

It is further ordered by the commission that the approval for a partial interlocker, as provided in the contract between the Southern Railway and the Louisville & Nashville Railroad Company herein referred to, be issued for a limited period, the commission reserving to itself complete jurisdiction over the conditions of the protection of the crossing named herein, with the right to change said conditions by further order, when in the opinion of the commission the necessities of the case may demand.

Dated at Springfield, Illinois, this 16th day of September, 1904.

[Signed] J. S. NEVILLE,
Chairman.

OPINION BY H. J. HAMLIN, ATTORNEY GENERAL OF THE STATE OF ILLINOIS.

Hon. James S. Neville, Chairman Railroad and Warehouse Commission, Springfield, Ill.:

MY DEAR SIR—Your board has submitted to me for investigation and an opinion as to the jurisdiction of the Railroad and Warehouse Commission in the matter of crossings.

I have examined the questions submitted in the following order:

(1) Crossings in cities and villages—

(*a*) Of steam roads with steam roads.

(*b*) Of steam roads with street railways.

(*c*) Of two street railways.

(2) Crossings outside of cities and villages having the same three divisions as above.

The question may be further complicated by the fact that the crossing may or may not be in the street or highway, hence it will also be required to consider the effect of a crossing upon private ground and of a crossing in streets and highways.

It is necessary to consider the Act of 1887 relating to interlocking switches, the Act of 1889 and the Crossing Acts of 1889 and of 1891, as well as the conditions surrounding the passage of these Acts. This we have a right to do, because in the *City of Chicago* vs. *Evans*, 24th Ill., 52 (55), the court, in construing a railroad statute, says that the members of the Legislature acted knowing that the various kinds of railroads were in existence, must be presumed to have acted accordingly. It is a familiar principle that the surroundings under which an Act was passed, and the evil sought to be remedied, are to be considered in construing the Act itself.

ACT OF 1887.

This Act was passed June 3, 1887, and is much narrower in its scope than the Acts following. Its title is narrow—"in regard to dangers incident to railroad crossings on the same level." That the title of the Act is pertinent as applying to its true intent is shown in the *County of Perry* vs. *County of Jefferson*, 94 Ill., 214 (syl. 4), and *Cruse* vs. *Aden*, 127 Ill., 231 (syl. 7).

The circumstances surrounding its passage were these: The Act relating to the fencing and operating of railroads (Sec. 12 of the Act of March 31, 1874, as amended) and which expressly in section 38 excepts street railroads, provided that all trains running on any railroads in this State, when approaching a crossing with another railroad upon the same level, should be brought to a full stop within a set distance therefrom. With the increase in travel and the consequent demand for fast freight and passenger service, necessitating as few stops as possible, and the concurrent increase in population and railroad mileage increased the number of crossings, thereby actually lessening the ability to make speed. All this was rendered doubly irksome because new inventions and improved safety devices for grade crossings gave the companies a remedy for the conditions. Under such a condition the Act of 1887 was passed.

It terms are closely akin to the words in section 12 of the Act of 1874. It begins by referring to railroads crossing at a common grade, and follows with the words, "crossing any stream or harbor by swing or draw bridge," the very words of the Act of 1874. The Act of 1887 also is purely permissive and in substance grants the right to the roads crossing, or to one of them, to erect interlocking switches, rendering it safe for engines and trains to pass such crossing without stopping; which, having been done and approved by the Railroad and Warehouse Commission, the penaltits of section 12, *supra*, were suspended. It was purely a permissive statute and no one could be forced to put in an interlocking switch, and in case the roads could not agree to do so, that ended the matter, unless one of them put the whole plant in at its own expense.

This Act did not alter the fact that one road could still, in new construction, condemn its right of way across any railroad, selecting its own spot for the crossing, and did not in the least affect opposed new crossings. By its limited terms and its narrow title, its permissive character, and its practically quoting the words of section 12, it seems this Act of 1887 only applied to so-called steam railroads, or roads governed by the Act of 1874.

ACT OF 1889.

In the meanwhile electric railroads, street railroads, elevated railroads and the like spread all over the State, and grade crossings were to be found on all sides. There was a consequent increase in the delay from frequent stops; this was not the only result. Accidents increased and the loss of life from such accidents and the loss of property ran up rapidly. Law suits and judgments for damages piled up on the railroads and vexatious litigation arose out of the attempts to cross established roads at inconvenient places. The repeated decisions of the Supreme Court, following the rule laid down in *L. S. & M. S. Ry. Co.* vs. *Chicago & W. I. R. R. Co.*, 97 Ill., 506 (syl. 5), gave the new road every advantage. See *Malott vs. Collinsville S. & E. St. L. Elec. Ry. Co.*, 108 Fed., 313, where the circumstances leading up to the Act of 1889 are discussed.

These conditions led to the passage of the Act of May 27, 1889. This Act of 1889 is an independent Act. It contains no referenec to section 12 of the Act of 1874 in any way nor to any other law before then passed. By its terms it relates only to the future. Its title is exceedingly broad. It is: "An Act in relation to the crossing of one railroad by another, and to prevent danger of life and property from grade crossings." The first section provides that "hereafter any railroad company desiring to cross with its tracks the main line of another railroad company, shall construct the crossing at such a place and in such manner as will not unnecessarily impede or endanger the travel or transportation upon the railway so crossed." It will be noticed that this Act here uses the word "railway." The first sentence directly changed the Eminent Domain Act as the Supreme Court had so often interpreted it and put a stop to the power of the new company to cross where and how it pleased. Having taken away the former method of settling the question, the Act provides a new way, viz., an appeal to the Railroad and Warehouse Commission. The commission were to decide the question, "with due regard to the safety of life and property;" and the former rule of requiring the new company to pay all the expenses was retained.

Here there is no limit, in the title, or the Act itself, nor in the object sought, to exclude from this Act any railroad crossing of any kind. Its words are utterly different from the words used in section 12 of the Act of 1874. No reference is made to any stops or remission of penalties. The intent seems to be entirely to protect life and property, and to do so it specifically, in plain words, changes the rule of law announced in the *L. S. & M. S. R. R. Co.* vs. *Chicago & W. I. R. R. Co.*, 97 Ill., 506 (syl. 5), *supra*, and places the Railroad and Warehouse Commission in charge, with directions to regard the safety of life and property. The words, "engine," "train," *et cetera*, are not found in it.

From this language it would seem that this Act includes all railroads of every kind. The language, "any railroad company," is closely akin to the language used in the Act of Feb. 12, 1855, relating to operative contracts, *et cetera*. This Act is now in the Railroad Act, Chap. 114, Hurd's Stat., Sec. 44, and Sec. 58 in Starr & Curtiss. It gives "all railroad companies incorporated or organized under, or which may be incorporated or organized under, the authority of the laws of this State," the power to do certain things. The language in *Chicago* vs. *Evans*, 24 Ill., 52 (55), is discussed by our Supreme Court in these terms:

"This language is manifestly sufficiently comprehensive to embrace horse railways as well as railroads whose cars are propelled by steam or other power, as well roads authorized to transport passengers only, as roads

authorized to transport passengers and freight by other power. The language of the enactment embraces all railroads organized, as well as those which might afterwards become so, and the Act makes no distinction or reservation as to the character of the railroad. The members of the General Assembly were fully aware that these various roads existed, and if any roads answering either description were not designed to be embraced, they would, it appears to us, have limited the operation of the Act so as to have excluded them. Horse city railways unquestionably fall within the description of the class of subjects of which they were legislating. They are, in every sense of the term, railroads; they are incorporated under the laws of the State, and are embraced within the language of the statute, and we have no doubt within its spirit."

Another feature which indicates that the Legislature meant to include street railroads in the use of the word "railways," as above pointed out. There are some cases which I will refer to later on, which suggest that railways and railroads are different, and that the former means street railroads alone. By the use, however, of both words in the Act of 1889, the Legislature seems to have clearly embraced all classes of roads for future crossings, where a main line was crossed.

Another feature is the fact that the Legislature, when it desired to except street railroads from any Act, has heretofore done so expressly. The Act of March 31, 1874, above referred to concerning the fencing and operating of railroads, by its title and its various sections related to "every railroad company," *et cetera.* This would seem to have included street railroads and that the Legislature knew that such would be the case without express exception shown by section 38, which expressly excepts street railways. Again, the General Incorporation Act excepts corporations for the operation of railroads, to which exception the Legislature provided that horse and dummy railroads might be organized thereunder. It is true that the enactments of subsequent Legislatures, composed of different members, have no more value in the construction of a statute than has the Act of any other department of the State. (*Rockhold* vs. *Canton Masonic Ben. Soc.*, 129 Ill., 440; syl. 14.) But this same argument would prevent section 12 of the Act of 1874 from influencing the meaning of the Act of 1889, a position which is urged with much persistence by the counsel of the Union Traction Company, in a brief submitted to me on this question.

It is also argued that the words, "in all cases," that the new company shall pay the expense of the crossing, indicates that the Act of 1889 applies only to so-called commercial roads. The cause of the *C., B. & Q. R. R. Co.* vs. *West Chicago Street Ry. Co.*, 156 Ill., 255, holds that a steam railroad company is not entitled to damages for the crossing of its lines by a street railroad. The fact that the Act of 1889 changes, in effect, the eminent domain law, is also urged as an argument for its limitation to steam roads; for, as it will be seen further on, street railroads have very limited powers of eminent domain. It is also said that the use of the words "main line" indicates steam roads. These arguments are unsound. The Act says that compensation shall be paid, in all cases * * * to be determined in the manner provided by law. This refers to eminent domain; or, if the law provides for no compensation, why may it not mean nothing is to be paid? The use of the words "main line" are discussed under the Act of 1891, where numerous such words are used.

The intent of the Legislature in 1889 was evidently to make future grade crossings safe for life and property, and by the careful omission of any reference to the Act of 1874, by the use of words "railroads" and "railways" and by the direction that the commission shall decide with "due regards to safety of life and property;" and from the fact that there were street railroads everywhere at that time, a common thing, well known to the members of that Legislature, and by the further fact that accidents were numerous at the crossings of all railroads, the conclusion is forced upon us that the words of the Act of 1889 include all classes of railroads so far as future crossings are concerned. It is certain that it governs the crossings of all roads organized under chapter 114, whether the crossing takes place

within or without cities, villages and towns. This was expressly decided in the case of *Malott* vs. *Collinsville C. & E. St. Louis Elec. R. Co.*, 108 Fed., 313, above quoted, where the electric railroad sought to cross the steam road within the corporate limits of Caseyville, Illinois, but not upon a street actually opened, but one which was about to be opened and which had been already authorized by village ordinance. The electric road was organized under chapter 114. In that case the court (Grosscup, J.) say:

"We think it clear that in respect to the place and manner of crossing, and an independent tribunal to determine such place and manner, the Act (of 1889) was intended to modify the former Acts (of eminent domain over crossings). In no State is the mileage of railways so great as that of Illinois. In no State has the extension of railways been so rapid. Nearly every township is now intersected, north and south and east and west, by these great railways. With the increase of mileage has come, also, multiplying of trains on roads already laid and growing need for greater speed. There has been no time when the danger from these sources was not rapidly increasing. The purpose behind the Act of 1889 is, we think, clearly disclosed in this rapid evolution of the railway situation.

"The Act of 1889 doubtless looked towards an escape as far as possible from (future) grade crossings. * * * * * * * *

"Our conclusion as to the purpose of the Act is reinforced by the fact that it followed shortly after the decision of *Lake Shore & M. S. Ry. Co.* vs. *Chicago & W. I. R. Co.* (*supra*); and by the fact that it was followed by another Act (the Act of 1891).

"The fact that its trains are to be operated by electricity instead of steam does not effect its place in the laws of the State as a railway company. * * * * * * * * Indeed, these electric railroads, in the speed of their trains, in the distance traveled and in their capacities for transportation, are well within the field of public utilities hitherto supplied by steam railroads alone. We cannot conceive that the Act (of 1889) was not meant to cover every form of railroad that, in the march of events, answers the purposes of general transportation. Nor does their incidental function as street railways in the towns and cities traversed lift them out of the railroad statutes. * * * * * * * * *"

From this reasoning it follows that the Railroad and Warehouse Commission, by the Act of 1889, was erected into an "independent tribunal" having powers new in the law and drawing to itself the powers of the new company to locate the new crossing, and limiting the power of the court to consider an eminent domain petition before action was had by the Railroad and Warehouse Commission. It is apparent from the above authorities that the Act of 1889 gave the commission power over the crossing of two steam roads, whether within or without cities; or rather the crossing of two roads organized under chapter 114. The only question now in doubt under this Act of 1889 is its effect upon the crossing of a company organized under chapter 32, with one organized under chapter 114, and the crossing of two companies both organized under chapter 32. These, the language of the statute and the reasoning above would say were also included; but at this stage that question is held until other matters are taken up below. At this point it is best to consider the next Act and make one discussion cover the general street railway question.

ACT OF 1891.

Following the Act of 1889 then came the Act of June 2, 1891. This is a wonderfully comprehensive statute. The title is: "To protect property and persons from danger at the crossings and junctions of railroads, by providing a method to compel the protection of the same." The last section of the Act (section 7) defines a crossing to include "every junction of two or more railroads' tracks, whether the tracks joining each other shall be owned by different companies or by the same company," with the proviso that the definition shall not apply to "switch, spur or side tracks."

This Act, on its face, purports to govern crossings already in, as well as crossings made in the future. As to crossings in the future, it extends the power of the Railroad and Warehouse Commission so even that if the companies concerned in the crossing should agree upon the terms of the crossing and there be, in fact, no dispute between them, yet in case the commission should deem the crossing to be dangerous to the public, the commission could force the placing of proper safety devices. In all other respects, it confirms the Act of 1889 and in no way lessens its effects.

Considering the Act of 1891 itself, the first section says that "in every case" where the main tracks of railroads cross at a grade "any company" owning or operating either of them may force the installation of safety devices. Section 2 provides that if the Railroad and Warehouse Commission, "from information obtained in any manner, have cause to believe that any such grade crossing is dangerous to the public," or "to persons operating trains," then it may of its own motion force the installation of safety devices. Section 3 orders the Railroad and Warehouse Commission, after an investigation of any crossing, to act as "the public good requires."

In certain parts of the Act the words "trains," "persons operating trains" are used; and in section 4 a reference is made to the Stopping Act of 1874. It is contended that these words limit the Act to so-called steam roads alone, a contention which will be considered hereafter. Let us first consider the conditions surrounding the passage of the Act of 1891.

This Act is, on its face, solely for the protection of the public. The intention of the Legislature seeems to have enlarged with each Act relating to railroad crossings. The Act of 1887 was a purely permissive one and one merely a matter of accommodation to the companies. The Act of 1889 changed the law applicable to new crossings and established the Railroad and Warehouse Commission into a new and independent tribunal to govern disputed future crossings, leaving the companies, if they could agree, the right to regulate the crossing in any manner as suited themselves and leaving the crossings already in, however dangerous they might be, to remain as they were. This Act of 1891 enlarges the powers of the commission so that any dispute over a crossing, established as well as future, may find its solution before the commission. Not only so, but it gives the commision the power of itself initiating the inquiry as to the safety of the crossing. It is manifest that the Act enlarged the powers of the commission, acting as the independent tribunal established by the Act of 1889. This power of the commission extended to all crossings embraced in the Act, and the Act goes to the length of defining crossings. This definition has been quoted above.

The first noticeable thing in the definition is the fact that a crossing of two tracks of the same company may be required to be protected with safety devices and at the expense of the company. This, it cannot be contended, is a reference to compensation under the Eminent Domain Act, as the words "in all cases" are contended to be in the Act of 1887. It is purely a provision for the protection of life and porperty. Then, too, the definition excepts certain things. Now, the presumption would be that when the Legislature makes certain exceptions, that it excepts all that is to be excepted and that if it had meant to except any other matter included in the general words used, it would have done so. Having gone to the trouble to specify certain excepted things, the presumption is that if other words were to be excepted, it would have gone to the trouble to enumerate them. The exceptions are "switches, spurs and side tracks." This language is as applicable to street railroads as to steam railroads, for the statute governing horse and dummy railroads then in force, though since repealed, in sections 1 and 2 recognizes that such roads have switches, spurs and side tracks. Furthermore, in passing the Act of 1891, the Legislature had the common knowledge open to us all that there were in existence street railroads organized under chapter 32 and that they were so-called railroads. The intent of the Act of 1891 was to protect life and property on all grade crossings. The intent was that in two classes of cases: First, where the companies crossing now, or in the past, should at any time disagree over the conditions of the crossing, that the Railroad and Warehouse Commission should be a tribunal of suffi-

cient power to hear and decide the dispute; and second, that where any grade crossing was dangerous to the public, the Railroad and Warehouse Commission could make and keep it safe. This second intention is so plainly expressed that the term includes street railroad crossings. The language is so broad that the Act would, unless affimatively shown otherwise, include every kind of railroad crossing.

It is contended, however, that the words "train," "persons operating trains," and the reference to the Stoppage Act, all limit the Act to apply only to so-called commercial railroads.

The rule governing the construction of the statutes is thus announced in *Burke* vs. *Monroe Co.*, 77 Ill., 610 (in discussing the word "city" as to whether it also included incorporated towns):

(614) "In Mason vs. Finch, 2 Scam., 223, it is said, in construing statutes, courts look at the language of the whole act, and if they find in any particulas clause, an expression not so large and extensive in its import as those used in other parts of the statute, if, upon a view of the whole act, they can collect, from the more large and extensive expressions used in other parts, the real intention of the Legislature, it is their duty to give effect to the larger expressions."

This case announces the rule also, that the remedy sought to be applied by the legislature in that act in order to carry out the object sought, of necessity included incorporated towns. The reasoning of the whole case is quite applicable to the Act of 1891 concerning crossings. The object of the act is to protect life and property and to compel the protection of grade crossings and that object, when a street railway crossing is in fact dangerous, can only be carried out by the Railroad and Warehouse Commission having power over such crossing.

Again: In the case of *B. & I. R. R. Co.* vs. *Gregory*, 15 Ill., (25), in discussing the contention that certain sections of a private act, by its narrow terms, limit the broader terms in the grant, and the Court say:

"One portion of a law may undoubtedly qualify, restrain, or even suspend another portion; but in order to have that effect, it must appear that it was framed with that intention."

From these citations it appears impossible to regard the use of the words above as limiting the intent to protect life and property.

The case of *Thompson* vs. *Bulson*, 78 Ill., 277, (syl. 2), has been referred to in support of the contention of a limitation of the statute. The Court says in that case:

"A section of a statute will be construed with reference to the provisions of other sections relating to the same subject and so as to leave all the words in the different sections in full effect according to their ordinary and usually accepted meaning."

This case, however, is not one where the larger terms of the act, title included, was sought to be limited by the casual words in some sections, hence it is impossible to apply the Thompson case as contrary to the position above taken.

In my opinion, the effect of the Acts of 1889 and 1891, is that, first, it establishes the Board of Railroad and Warehouse Commissioners as an independent tribunal to govern railroad crossings, in two classes of cases:

(*a*) When either company shall apply for a ruling of the commission.

(*b*) Whenever the safety of life and property requires action.

This power is limited to no special company or companies, but to all crossings, whether in or without cities and villages, and whether the companies are incorporated under the general incorporation act or under the railroad act. Furthermore, it is apparent that this power so far as street railroads are concerned, is applicable to crossings only and not to the reports required from the so-called commercial railroads, under the act creating the commission.

So far I have considered only the effect of the acts themselves. I will now consider some of the objections that are made to the construction above given.

OBJECTION THAT CITY'S POWER IS ABSOLUTE.

The first contention made in the above construction is that the city has absolute power over streets and that to permit the Railroad and Warehouse Commission to interfere with street railroad crossings, or with a crossing of the steam road by a street railroad, would be to bring about a conflict of authority between the commission and the municipal authorities in cities. It will hardly be contended that city authorities may prevent the commission from taking jurisdiction of the crossing of two steam railroads within the city limits, or even such a crossing in a street. In the case of *Malott* vs. *Collinsville C. & E. St. L. Elec. Ry. Co.*, 108 Fed., 313, the Act of 1889 was held to apply to the crossing of two companies incorporated under Chap. 114, where the crossing took place within the corporate limits of Caseyville, Illinois, and at a place which was ordered to be, but had not yet been opened as a street. The same argument causing a conflict over the crossing of street railroads would cause a conflict over the crossing of steam railroads for the statute, (Sec. 25), gives the city power to "provide for and change the location, grade and crossings of any railroad," a section which has beeen held in *Harvey* vs. *Aurora & Geneva R. R. Co.*, 186 Ill., 283, (292), to apply to steam roads alone. The same argument which would deny the commission power over street railroad crossings in cities would construe the above section to exclude its power over any crossings in cities. Such an argument would nullify the Acts of 1887, 1889 and 1891, and would deprive the commission of power to protect at the very place where that power was most needed.

It is said that the city might consent to a crossing at one spot only, and that the commission would deny the right because the place was dangerous; or that the city might consent to and insist upon a grade crossing and the commission insist upon an overhead crossing. But the same argument equally applies to the crossings of steam roads, and if the Legislature permitted such a possible conflict in one case, why not in the other. The protection of life and property is an object of sufficient importance to permit the risk of a possible conflict of this character, a remote danger compared with the common danger at grade crossings. Some street car grade crossings in the city of Chicago yearly claim dozens of victims and the crossings of a steam and street railroad are still more dangerous. The danger the Legislature sought to avoid is so much more real than this hypothetical danger that there seems to be no doubt of the power of the commission.

OBJECTION THAT THE ACT CREATING THE COMMISSION IS LIMITED.

It is also argued that the Act of April 13, 1871, creating the Railroad and Warehouse Commission, by its terms, by the word "Warehouse" by the provisions requiring detailed reports from railroads, all indicate that the commission had nothing to do with street railways. It is argued that the words of the act are broad, the terms "any railroad," "any railroad company" and "every railroad company now or hereafter incorporated or doing business in the State under any general or special law," the reference to the officers of "every railroad company"—all appear and being as broad as the words in the Acts of 1889 and 1891 indicate that the latter acts should be strictly construed. This argument, even should it be conceded that the original act creating the commission is limited to steam roads, does not carry any weight, for the Act of 1889 expressly enlarges the powers of the commission and makes it an independent tribunal to control crossings.

It is true that the original act creating the commission has not been, in practice applied to street railways; and that there are two *obiter dicta* in Illinois which indicate that the act does not apply to them. The first one is in *Wiggins Ferry Co.* vs. *E. St. L. U. Ry. Co.*, 107 Ill., 455-6, where the Court says:

"To say the least, it is a matter of grave doubt whether the consolidated Act of 1874 entitled, 'Railroads' has any application to street railroads or whether street railroads can lawfully incorporate at will under that act. This special provision in the corporation act (excepting horse and dummy

railroads) would seem to indicate a purpose on the part of the Legislature to treat horse and dummy railroads, at least in some respects, as a distinct class of roads, and this purpose on the part of the Legislature, is further manifested in certain provisions found in the Railroad and Warehouse Act. That act, as consolidated in the revision of 1874, consists of a number of statutes passed by the Legislature at different times but each having in view the accomplishment of some particular object or objects. While the terms of the first section of the act seem sufficiently broad to embrace horse and dummy railroads, which we regard as falling within the general description of street railways, yet, in other subdivisions of the act this class of roads is expressly excluded from its operation. Citing section 77 and section 95, chapter 114, Hurd 1874."

But the court then says that this question is not decided, for the reason that the company before the court was organized under chapter 114, and the question is expressly reserved.

The other case is *Dean* vs. *Chicago Gen. Ry. Co.*, 64 Ill. App., 167, where Waterman J., at the end of the opinion, and wholly outside of the case before him, says:

"We do not regard the Railroad and Warehouse Act as applying to the operation of street railways within the limits of one city."

On the other hand, the case of *Chicago* vs. *Evans*, 24 Ill., 55, quoted above, expressly held that certain portions of the act, existing before the revision, did apply to street railroads. Furthermore, the Legislature's care in excepting street railroads from the act for fencing and operating railroads, shows that in the mind of that body the act would apply to them, if not specially excepted.

Again in *Malott* vs. *Collinsville C. & E. St. L. Elec. Ry. Co.*, 108 Fed. 313, the court said, and was quoted above:

"Nor does their incidental function as street railways in the towns or cities traversed, lift them out of the railroad statutes."—reasoning which the Illinois Supreme Court approve in *Knopf* vs. *Lake St. Elec. R. R. Co.*, 197 Ill., 218.

It is further urged that the original act creating the Railroad and Warehouse Commission, even though not by its terms, limited to so-called commercial roads, yet the acts of the commission in their public business has interpreted it as though such was its true meaning and that the construction thus adopted is binding by usage. Counsel for the Union Traction company, in this behalf, cites *Chicago & Northwestern Ry. Co.* vs. *Boone county*, 44 Ill., 243, and *Link* vs. *City of Litchfield*, 141 Ill., 477, yet the act of 1871 which created the Railroad and Warehouse Commission was, in *Central Elevator Co.* vs. *The People*, 174 Ill., 210, exempted from this rule. In that case the court said:

"Finally it is claimed that there nas been a practical construction of the law by the Warehouse Commissioners, permitting the practice complained of. * * * It is said, however, that since the practice became common the Warehouse Commissioners charged with the administration and enforcement of the law did not question the legality of the practice. There was nothing in the nature of affirmative construction and the most that can be said is that the Railroad and Warehouse Commissioners failed to enforce the law. That fact does not amount to a practical construction. If the commissioners were derelict. it would not bind the public, and indifference on their part could not have that effect."

A complete examination of the cases discussing construction of statutes from the acts of officials, will show that it is affirmative action by the officials and not the absence of action, that the courts consider, and the fact that the commission may have failed to apply the crossing acts to street railways does not indicate that the act itself does not cover them. Furthermore, it could be conceded that the original act creating the commission did not mean to include street railways, and still the acts of 1889 and 1891, by their express addition to the powers of the commission, would give ample grounds to include street railway crossings within these new acts.

The Railroad and Warehouse Commission, however, has been for some years taking jurisdiction of the crossing of electric roads with steam roads in the county districts. In May, 1896, (Decisions of the Commission, pages 337, 339 and 340) the commission took jurisdiction of the crossings of the C. & A. R. R. Co's. tracks by the Alton Ry. & Ill. Co. In October, 1890, it took jurisdiction of the crossing of the C. & A. tracks by the Lincoln Street Railway Co. In the petition of the Illinois Trans. R. R. Co. vs. L. E. & St. L. Cons. R. R. Co. (Volume 2 of Decisions, pp. 1, 6) the board took jurisdiction of a like crossing. Also in the case of the C. M. & St. P. R. R. Co. vs. Freeport Ry. Co. in October, 1903, (pp. 33-38) the commission took jurisdiction over the crossing of electric road with steam road. In the petition of the C. & A. R. R. Co. vs. St. L. & S. R. R. Co. where the grade crossing was within the limits of Carlinville, Ill., the commission took jurisdiction of the crossing by an electric line of the same company's tracks.

These acts are affirmative constructions of the statute by the commission in favor of its power over crossings of steam roads by street railroads, and are a complete answer to the above contention. Indeed these acts will weigh with the court as a strong argument in favor of the power of the commission.

It is further contended by counsel that the policy of the Legislature has been to put street railways and commercial railroads in two distinct classes, which for convenience may be called, corporations organized under chapter 32 and corporations organized under chapter 114. The cases of Wiggins Ferry Co. vs. E. St. L. U. Ry. Co., 107 Ill., 456, also Harvey vs. Aurora & Geneva Gen. Ry. Co., 174 Ill., 307, are cited in support of such contention also the further fact that paragraph 25 of the powers of cities, has been held to apply only to general or commercial railroads and the fact that chapter 131, page 1236 Starr & Curtiss, Vol. 4 and Hurd 1903, page 1834, each have acts limited to street railroads, are also urged as showing the distinction.

Suppose that it be granted that the Legislature's policy is to distinguish between the two classes of roads, does it follow that the crossing Acts of 1889 and 1891 would not apply to both classes, in proper cases? The danger to life and property would come about wholly from the use, and the protection needed would be required regardless of the method of incorporation. Corporations organized under chapter 32 can run long distances. can go through the country and carry travel for miles. In Russell vs. Chicago Elec. Ry. Co., 205 Ill., 155, the company sought to extend its lines outside the city limits and the court said that under proper conditions it could do so.

An examination of the corporation laws of Illinois, in my opinion. confirms the position and shows that the distinction between street and commercial railroads is solely with reference to the powers of the companies and not with reference to the police power of the State exercised for the protection of life and property.

I do not consider it necessary to discuss the relative powers of railways organized under chapter 32 and under chapter 114 *supra*. It is true that corporations organized under chapter 32 are much more limited in their powers than those organized under chapter 114. In my opinion, it is not necessary to discuss these limitations. It seems that the distinction made between the two classes of companies by the courts is solely as to the power each class may possess. This distinction as to power in my judgment does not in the least affect the question of protection to life and property; for the danger comes from the use, not from the scope of the power of the corporation. It is also plain that the danger will arise regardless of the place of crossing, whether within or without cities, villages and towns and whether on or off of private ground. Indeed, the danger will increase in cities and still further increase when the crossing is in a street. The danger to life and property being the thing influencing the Legislature under the Acts of 1889 and 1891, it would seem that the crossings where danger arose, regardless of their location or the method of organization of companies, were under the power of the commission.

In consideration of the provisions of the statutes above referred to and a review of the cases of our own courts, and regardless of the fact whether th act creating the Railroad and Warehouse Commission covered all railroa companies, I am of the opinion that the Act of 1889 made the commission a independent tribunal to act upon disputed future crossings, of all companies wherever located, for the protection of life and property, and the Act of 189 enlarged the power of this independent tribunal to cover established crossing upon the application of either company thereto, and to cover establishe crossings, including crossings of two tracks of the same company, in all case where danger existed. This tribunal is to act for the protection of life an property and to make that protection effective, its power covers all kinds o crossings, whether situated in or outside of cities, on private or publi ground, and of any companies, for the words in the act are broad enough t embrace all these matters. The intent is broad enough to reach any danger ous crossing and the mischief to be remedied can only be remedied by thu construing these acts. Such being the case, and as this construction does no strain the words of the statute, but on the contrary, is within the usua meaning of the same, the power of the commission in my judgment, is wel settled.

I am led to the above conclusion also from examination of cases in othe states under similar statutes. See *Penn. R. Co. vs. Braddock Elec. Ry. Co* 165 pa., 127; *Port Richmond & Prohibition Park Elec. R. R. Co. vs. State Island Rapid Trans. Co.*, 144 N. Y., 445; *Stillwater & M. Street Ry. Co.* vs *Boston & Maine R.R. Co.*, 171 N. Y., 589, and *Rutland Ry. Co.* vs. *Bellows Fall and Sexton River St. Ry. Co.*, 73 Vermont, 20; Elliot on Railroads, Vol. 3 Sec. 211, where the author uses the following language:

"Street railways have a right to cross steam railways and it has been hel that the general statutes in force regulating the manner in which steam rai roads shall cross each other are applicable in such cases; and under a statut which authorizes a court to order a crossing other than at grade, a stree railway may be ordered to construct an overhead crossing." Citing *Elizabethtown etc. R. R.* vs. *Ashland, etc., R. R. Co.*, 92 Ky., 347 and the New York and Pennsylvania cases above cited. Joyce on Electric Law, Sec. 407 "The right of the railroad at such crossings is subject to the police power o the State."

In conclusion, one other argument in favor of the power of the commissio is offered, and it is one which greatly adds to the position above taken. Th Act of 1889 requires the commission, after the hearing to decide, "with du regard to the safety of life and property." The Act of 1891 requires the de cision to be such a decision as "the public good requires." These word make the question of the power of the commission over crossings, a questio involving a public interest, and where a public interest is involved, a statut is liberally construed so as to carry out the best interests of the public. I these statutes are to be liberally construed then they cover all crossings of a roads whenever the crossing is dangerous to life and property. If a publi interest is involved, the jurisdiction of the commission is presumed unles the streeet railroads can make it appear that the Legislature by affirmativ words exempted them from the operation of the statutes, for, in that case, i would not be a question of extending the meaning of the statute by implica tion, but of limiting it by implication, and to place the limitation would re quire evidence of such an intent of the Legislature. This principle plainl gives the Railroad and Warehouse Commission authority over all crossing for the purpose of protecting life and property and compelling the protectio of the same.

Respectfully submitted,

H. J. HAMLIN,
Attorney General.

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

Louisville & Nashville Railroad Company, *Petitioner.*

vs.

East St. Louis Railway Company, *Respondent.*

Petition to prevent grade crossing.

OPINION AND ORDER OF THE COMMISSION.

On Oct. 22, 1904, the petitioner, the Louisville & Nashville Railroad Company, duly filed in the office of the Railroad and Warehouse Commission of the State of Illinois, its petition to prevent the East St. Louis Railway Company from crossing the tracks of its main line at grade on Seventh street, in the city of East St. Louis, in the county of St. Clair and State of Illinois. The commission thereupon caused due and legal notice of the filing of the said petition to be given to the respondent, the East St. Louis Railway Company, and fixed the date for said commisison to personally examine said proposed crossing, for Oct. 24, 1904.

And on the 24th day of Oct., A. D. 1904, the Railroad and Warehouse Commission of the State of Illinois, together with the officers and attorneys of the petitioner and the respondent, personally examined the proposed crossing on Seventh street in the city of East St. Louis and all the surrounding territory, for the purpose of ascertaining whether a grade crossing should be permitted on the main line of the tracks of the Louisville & Nashville Railroad Company at Seventh street, and afterwards, on to-wit, the 11th day of November, A. D. 1904, the respondent filed its answer to the petition of the Louisville & Nashville Railroad Company filed in said cause on Oct. 22, A. D. 1904. The commission thereupon assumed jurisdiction of the subject matter of said petition and the parties thereto, and set the cause for hearing at the office of the said Railroad and Warehouse Commission in the city of Springfield, in the State of Illinois, on the 11th day of November, A. D. 1904. At the time and place fixed for said hearing, both the petitioner and respondent appeared before the said commission, by their respective attorneys, the Louisville & Nashville Railroad Company appearing by its attorney, J. M. Hamill, and the respondent, the East St. Louis Railway Company appearing by its attorney, M. W. Schaefer, and both parties having announced themselves ready to proceed with the hearing of the cause, the commission heard all of the oral and documentary evidence introduced by both parties. And after all the witnesses offered by both parties had been fully examined in reference to the matter, the commission heard argument of both counsel for petitioner and respondent, and the commission, not being fully advised, took the cause under advisement.

And now, on the 16th of November, A. D. 1904, at a meeting of the Railroad and Warehouse Commission at its office in Chicago, Illinois, the commission now being fully advised and informed in the premises, find that the petitioner, the Louisville & Nashville Railroad Company, is operating a line of steam railway extending from East St. Louis, across the State of Illinois, and through the states of Indiana and Kentucky, to the city of Nashville, in the state of Tennessee, and that the line of railroad operated by it crosses Seventh street in East St. Louis.

The commission further finds that the East St. Louis Railway Company is operating all of the electric lines of railway operated in the city of East St. Louis, and that it proposes to cross with its tracks the main tracks of the Louisville & Nashville Railroad Company on Seventh street in said city of East St. Louis.

That said East St. Louis Railway Company is incorporated under the general incorporation laws of the State of Illinois, for the purpose of owning and

operating an electric railway in the city of East St. Louis, and that the commission have jurisdiction and authority over such line of electric railway. The commission further find that the proposed crossing of the East St. Louis Railway with the main tracks of the Louisville & Nashville Railroad Company at Seventh street, in East St. Louis, is at the center of a seven-degree curve in the tracks of the said Louisville & Nashville Railroad. That on account of said curve, employés of petitioner in charge of its trains approaching Seventh street crossing from either direction, could not see the electric cars at said crossing, until said cars would be on the crossing, and the employés of respondent, in charge of its cars, approaching said Seventh street crossing, from either direction, could not see the trains or locomotives of petitioner from either direction, until such electric cars would be on such crossing.

That from Seventh street westwardly to St. Clair avenue in said city of East St. Louis, there is a very heavy ascending grade in the tracks of the Louisville & Nashville Railroad and from Seventh street eastwardly, there is also an up-grade in the tracks of the said Louisville & Nashville Railroad Company. That on account of said curve and said grade, heavy freight trains approaching said Seventh street crossing from either direction, on the said Louisville & Nashville Railroad, could not be stopped at said crossing, and thereby there would be caused constant danger of collisions between trains of said petitioner and the electric cars of respondent, passing over said crossing.

The commission further find that to accommodate all the travel on respondent's road and its connections, a car would have to pass over said Seventh street crossing every fifteen minutes, in one direction or the other.

That the petitioner runs many passenger and freight trains each way daily, over said crossing. That the number of electric cars on respondent's railway and the number of passenger and freight trains on petitioner's line would constantly increase; and that said crossing is within the yard limits, used for switching purposes by petitioner in its East St. Louis yards.

The commission further find that a grade crossing on Seventh street in said city of East St. Louis would be a very dangerous crossing, and that that place is not a fit nor proper place for respondent to cross with its tracks the main line of petitioner's railroad, and that such crossing would unnecessarily impede or endanger the travel and transportation upon the main line of petitioner's railroad, and would unnecessarily endanger life and property both on petitioner's and on respondent's railroad, at said crossing.

The commission further find, that by an act passed by the General Assembly of the State of Illinois, entitled "An Act in relation to the crossing of one railway by another, and to prevent danger to life and property from grade crossings," approved May 27, 1889, in force July 1, 1889, it is provided that "hereafter any railroad company desiring to cross with its tracks the main line of another railroad company, shall construct the crossing at such place and in such manner, as will not unnecessarily impede or endanger the travel or transportation upon the railway so crossed. If in any case objection be made to the place or mode of crossing proposed by the company desiring the same, either party may apply to the Board of Railroad and Warehouse Commissioners, and it shall be their duty to view the ground and give all parties interested an opportunity to be heard. After full investigation, and with due regard to safety of life and property, said board shall give a decision prescribing the place where and the manner in which said crossing shall be made," etc.

From the personal inspection of the ground on which said proposed crossing would be located, made by this commission, and from the proofs introduced in evidence in this cause, the commission are clearly of the opinion that under the act above referred to, it is their duty to prohibit a grade crossing of the tracks of the petitioner's main line, at grade on Seventh street, in East St. Louis, as such crossing would be both unnecessarily dangerous to life and property and would unnecessarily impede or endanger the travel or transportation upon the main line of petitioners' railroad.

It is therefore ordered by the commission, that the respondent, the East St. Louis Railway Company, construct and build an overhead bridge crossing

over the railroad tracks and right of way of petitioner, the Louisville & Nashville Railroad Company, on which to lay its electric track or tracks, for the purpose of crossing over the main tracks and right of way of petitioner, the Louisville & Nashville Railroad Company, on, or immediately adjacent to Seventh street, in East St. Louis, such overhead crossing to leave, at least, full twenty-two (22) feet in the clear between the top of the rails of the petitioner's tracks and the lower part of the superstructure of said overhead bridge; said overhead bridge to be constructed and maintained so as not to in any way interfere with, impede, obstruct or delay the passage of trains, or interfere with, or endanger the lives or limbs of the employés of the petitioner, the Louisville & Nashville Railroad Company, while on the locomotive, cars or trains of petitioner, and passing under said bridge or viaduct, on and over the tracks of petitioner, at or under said bridge or viaduct, and adjacent to Seventh street crossing in the city of East St. Louis; and said respondent, the East St. Louis Railway Company, is hereby ordered and directed, not to cross with its tracks the main line of petitioner, the Louisville & Nashville Railroad Company, on or adjacent to Seventh street, in said city of East St. Louis, in any other way than by an overhead or viaduct crossing, to be constructed and forever maintained by the said respondent, the East St. Louis Railway Company, over and across the right of way and railroad tracks of the petitioner, the Louisville & Nashville Railroad Company on or immediately adjacent to Seventh street, in said city of East St. Louis.

It is further ordered that the said respondent, the East St. Louis Railway Company, pay the entire cost of construction and maintenance of such overhead bridge or viaduct crossing, including all necessary approaches thereto; and that said respondent, the East St. Louis Railway Company, also pay all the cost of this proceeding before the said Railroad and Warehouse Commission.

J. S. Neville,
Arthur. L. French,
Commissioners.

Attest: Wm. Kilpatrick,
Secretary.

Dated at the office of the commission in Chicago, Ill., this 5th day of January, 1905.

Before the Railroad and Warehouse Commission of the State of Illinois.

Louisville & Nashville Railroad Company, *Petitioner.*

vs.

East St. Louis & Suburban Railway Company, *Respondent.*

Petition for protecting crossing by interlocking or overhead crossing.

Order of the Commission.

On Oct. 22, 1904, the petitioner, the Louisville & Nashville Railroad Company, duly filed in the office of the Railroad and Warehouse Commission of the State of Illinois, its petition for the construction of an interlocking plant at the crossing of the East St. Louis & Suburban Railway where it crosses the tracks of the Louisville & Nashville Railroad Company at grade in the southeast quarter of the northwest quarter of section twenty-five (25), township two (2), north range nine (9) west, in French Village, in the county of St. Clair and State of Illinois; as shown on blue print marked "Exhibit A" to the petition of the Louisville & Nashville Railroad Company.

The commission thereupon caused due and legal notice of the filing of said petition to be given to the respondent, the East St. Louis & Suburban Railway Company and on the 24th day of October, 1904, the Railroad and Ware-

house Commission of the State of Illinois, together with the officers and attorneys of the petitioner and respondent personally examined the crossing at grade at the point above described where the tracks of the East St. Louis & Suburban Railway Company cross the tracks of the Louisville & Nashville Railroad Company; and afterwards on the 26th day of October, 1904, the respondent filed its answer to the petition of the Louisville & Nashville Railroad Company in said cause. The commission thereupon assumed jurisdiction of the subject matter of said petition and the parties thereto, and set the cause for hearing at the office of said Railroad and Warehouse Commission, in the city of Springfield and State of Illinois on the 11th day of November, A. D. 1904. At the time and place fixed for the hearing of said petition, petitioner and respondent appeared before said commission by their respective attorneys, the Louisville & Nashville Railroad Company appearing by its attorney, J. M. Hamill, and the East St. Louis & Suburban Railway Company appearing by its attorney, M. W. Schaefer, and both parties having announced themselves ready to proceed with the hearing of said cause, the commission heard all of the oral and documentary evidence introduced by both parties; and after the evidence of the witnesses offered by both parties had been given in reference to the matter, the commission heard argument of both counsel for petitioner and for respondent, and the commission not being fully advised took the cause under advisement.

And now, on the 14th day of February, 1905, at a meeting of the Railroad and Warehouse Commission of the State of Illinois, at its office in Springfield in the State of Illinois, the commissioners now being fully advised and informed in the premises, find that the petitioner, the Louisville & Nashville Railroad Company, is operating a line of steam railroad extending from the city of East St. Louis in the county of St. Clair and State of Illinois, across the State of Illinois and through the states of Indiana and Kentucky and to the city of Nashville in the state of Tennessee; and that the line of railroad operated by it is crossed by the tracks of the East St. Louis and Suburban Railway Company at French Village at the point hereinbefore described.

The commission further find that the East St. Louis & Suburban Railway Company is operating a line of electric railroad extending from the city of East St. Louis in the county of St. Clair and State of Illinois, eastwardly to Edgmont in said county, thence northeasterly to French Village and Caseyville in said county of St. Clair and to Collinsville and Edwardsville in the county of Madison in the State of Illinois; and that said East St. Louis & Suburban Railway Company is a common carrier of passengers and express over the railway above described and crosses at grade with its tracks the tracks of the Louisville & Nashville Railroad Company at French Village at the point hereinbefore described, as shown on blue print marked "Exhibit A" to the petition. That said East St. Louis & Suburban Railway Company, immediately north of the right of way of petitioner, crosses with its tracks the tracks of the St. Louis & O'Fallon Railway Company at grade, as shown on the blue print marked "Exhibit A" to the petition, which is a line of steam railway extending from the city of East St. Louis in the county of St. Clair and State of Illinois, eastwardly to French Village and thence northeasterly to near the town of O'Fallon in the county of St. Clair and State of Illinois; that said St. Louis & O'Fallon Railway Company is a common carrier of freight. That in the track of the Louisville & Nashville Railroad Company running southeastwardly from said crossing there is a two (2) degree curve; and that the tracks of the East St. Louis & Suburban Railway Company are practically straight. That from said crossing in a southeastwardly and northwesterly direction there is an up-grade of sixteen (16) feet to the mile in the tracks of the Louisville & Nashville Railroad Company for a distance of 5,000 feet or more on each side of said crossing, as shown by profile marked "Exhibit B" to the petition.

That from said crossing in a northeasterly direction, there is an up-grade in the tracks of the East St. Louis & Suburban Railway Company of over one hundred eight (108) feet to the mile for a distance of one thousand feet or more; and that in approaching said crossing from the northeast on said suburban track said grade for more than one thousand feet keeps descending on a

grade of over one hundred eight (108) feet to the mile up to said crossing, as shown by said profile. That the East St. Louis & Suburban Railway Company runs one car in one direction or the other over said crossing every twenty or thirty minutes in the day time and in the night time up to midnight. That all travel on the Lebanon line, hereinafter described, passes over said crossing in cars of the East St. Louis & Suburban Railway Company. That petitioner, the Louisville & Nashville Railroad Company, runs many passenger and heavy freight trains some of them carrying from seventy-five (75) to one hundred (100) coal cars loaded when running northwest and empty when running southeast daily over said crossing; that on account of the heavy grades and sharp curves described above on both petitioner and respondent's railways, on account of the large number of cars carrying passengers and express running over said crossing on the East St. Louis & Suburban Railway and the large number of passenger and heavy freight trains, carrying passengers and freight, running over said crossing on the Louisville & Nashville Railroad, and the danger of collisions between said passenger and freight trains running over petitioner's line, and the cars running over the respondent's line, said crossing is dangerous to life and property.

The commission further find that the crossing above described on account of the steep grade in the tracks of the East St. Louis & Suburban Railway Company hereinbefore described, and on account of the grade and curves in the track of the Louisville & Nashville Railroad Company, hereinbefore described, said grade crossing is dangerous to both persons and property being transported over the line of either railroad. That from the personal inspection made by the commission of the ground on which said crossing is located, and from the proofs introduced in evidence in this cause, the commission are clearly of opinion that it is their duty to require an overhead crossing to be constructed and maintained at a point within four hundred (400) feet west of where the East St. Louis & Suburban Railway now crosses the tracks of the Louisville & Nashville Railroad Company at French Village, at the place hereinbefore described.

It is further ordered by the commission that the respondent, the East St. Louis & Suburban Railway Company, construct and build an overhead crossing over the right of way and railroad tracks of the petitioner, the Louisville & Nashville Railroad Company, at a point within four hundred (400) feet west of where the East St. Louis & Suburban Railway Company now crosses with its tracks the tracks of the Louisville & Nashville Railroad Company, at the point hereinbefore described in French Village, in the county of St. Clair and State of Illinois; such overhead crossing to leave at least fully twenty-two feet in the clear between the top of the rails of petitioner's railroad tracks and the lower part of the superstructure of said overhead bridge; said overhead bridge to be constructed and maintained so as not to in any way interfere with impede, obstruct or delay the passage of trains, or interfere with or endanger the lives of the employés of the petitioner, the Louisville & Nashville Railroad Company, while on the locomotives, cars or trains of the petitioner, and passing under such bridge or viaduct on and over the tracks of petitioner at or under the said bridge or viaduct, or adjacent to said bridge or viaduct, when constructed at the place above described. And said respondent, the East St. Louis & Suburban Railway Company, is hereby ordered to construct and have in operation, said bridge or viaduct for the purpose of laying down its tracks thereon across the main track and right of way of the Louisville & Nashville Railroad Company at the point above described, within one (1) year from the 14th day of February, A. D. 1905; and that said East St. Louis & Suburban Railway Company be, and it is hereby required to construct said bridge or viaduct for the purpose aforesaid, within the time aforesaid and thereafter to forever maintain the same for the purpose of crossing with its tracks the right of way and railroad tracks of the Louisville & Nashville Railroad Company.

It is further ordered that said respondent, the East St. Louis & Suburban Railway Company, pay the entire cost of the construction and maintenance of such bridge or viaduct, including all necessary approaches thereto, except fifteen hundred (1,500) dollars to be paid by the Louisville & Nashville Railroad Company towards the construction alone of said overhead

bridge or viaduct and said Louisville & Nashville Railroad Company is to grant the right of way, without compensation, across the right of way and railroad tracks of the said Louisville & Nashville Railroad Company for said overhead bridge or viaduct; and that the respondent, the East St. Louis & Suburban Railway Company, after said overhead bridge or viaduct has been constructed and built, shall forever thereafter pay the entire cost of the maintenance and repair thereof; and that said East St. Louis & Suburban Railway Company and the Louisville & Nashville Railroad Company shall each pay one-half of the cost of this proceeding before the said Railroad and Warehouse Commission.

[Signed] J. S. NEVILLE, *Chairman.*
ARTHUR L. FRENCH, *Commissioner.*

Springfield, Ill., Feb. 14, 1905.

L. M. Hammond,

vs.

L. S. & M. S. Ry. Co.
Illinois Central R. R. Co.
B. & O. R. R. Co.
P. C. C. & St. L. Ry. Co.

Complaint of excessive switching charges in Chicago.
Dec. 6, 1904. Complaint filed and copy served on respondent companies.
Jan. 17, 1905. Title of complaint changed to Coal Shippers' Association vs. same respondents.
Case still pending.

National Mining Company,

vs.

Louisville & Nashville Railroad Company.

Excessive switching charge from Eldorado to mine.
Feb. 7, 1905. Complaint filed and respondent company served with copy.
March 7, 1905. Hearing of case at Springfield.
Settled by agreement.

The Wabash Railroad Company,

vs.

Bloomington, Pontiac & Joliet Electric Railway Company,

and

Illinois Central Railroad Company,

vs.

Bloomington, Pontiac & Joliet Electric Railway Company.

Complaint as to Crossing.

ORDER.

Now on this 11th day of April, A. D. 1905, this cause coming on to be heard, the petitioner, The Wabash Railroad Company, appearing by C. N. Travous and R. S. McIlduff, its attorneys; the Illinois Central Railroad Company, by John G. Drennan, its attorney, and the Bloomington, Pontiac & Joliet Electric Railway Company, by A. C. Norton, its attorney; and it also appearing to this

commission that formal pleadings have been waived and that each of the parties hereto has appeared herein and submitted itself to the jurisdiction of this commission for the purpose of having this commission prescribe the place where and the manner in which the railroad tracks of the said Bloomington, Pontiac & Joliet Electric Railway Company shall cross the tracks of the said Illinois Central Railroad Company and the said Wabash Railroad Company at the point where said last two named tracks now intersect in the Township of Pontiac, Livingston county, Illinois, and for such further orders as to this commision shall seem meet, and this commission having viewed the ground at said crossing, and given all parties an opportunity to be heard, and having due regard for the safety of life and property, does hereby make and order as follows:

That the said Bloomington, Pontiac & Joliet Electric Railway Company shall be permitted and is hereby authorized to cross the tracks or track and rights-of-way of the said Illinois Central Railroad Company and said The Wabash Railroad Company at the place and in the manner shown in Exhibit "A" subject to the provisions, conditions and limitations hereinafter set forth with reference to crossings.

That the said Illinois Central Railroad Company and the said The Wabash Railroad Company shall each at its own expense on or before the first day of June, 1905, raise its tracks at said proposed crossing to a point four feet higher than that which they now respectively occupy.

That said Bloomington, Pontiac & Joliet Electric Railway Company shall cross said respective tracks and rights-of-way of the Illinois Central Railroad Company and The Wabash Railroad Company underneath said tracks by means of a subway, which subway, including substructures and superstructure thereof shall be constructed at the expense of the Bloomington, Pontiac & Joliet Electric Railway Company and of such material and design and in accordance with such plans and specifications therefor as may be approved by the chief engineers of said three companies, and in case of failure or inability of said chief engineers to agree in relation thereto, the same shall be submitted to this commission for its approval, after notice and opportunity to each of the parties to be heard upon the same.

The said subway shall have sufficient clearness to permit the safe passage of the cars of said Bloomington, Pontiac & Joliet Electric Railway Company under said tracks, and the said substructures and superstructures thereof shall be extended of sufficient width to permit the laying of additional tracks on the rights-of-way of said Illinois Central Railroad Company and said The Wabash Railroad Company, whenever said companies, or either of them, may desire to lay additional tracks thereon.

The said subway, substructures and superstructures shall also be maintained and renewed by and at the expense of the Bloomington, Pontiac & Joliet Electric Railway Company so as to be at all times in good and safe condition for the passage of trains and operation of the railroads of the Illinois Central Railroad Company and The Wabash Railroad Company.

The temporary structure necessary to carry the trains of said Illinois Central Railroad Company and The Wabash Railroad Company over said crossing pending the construction of the permanent subway structure shall be made by the Illinois Central Railroad Company upon its right-of-way and the Wabash Railroad Company upon its right-of-way, but at the cost and expense of the Bloomington, Pontiac & Joliet Electric Railway Company.

It is further ordered that for a period of ninety days said Bloomington, Pontiac & Joliet Electric Railway Company shall, without expense to or liability on the part of either of the said Illinois Central or The Wabash Railroad Companies, have a right to install a temporary crossing over the tracks and right-of-way of said Illinois Central Railroad Company and said The Wabash Railroad Company, respectively, at grade, at the points where the tracks of said Bloomington, Pontiac & Joliet Electric Railway Company now intersect the right-of-way of the said Illinois Central Railroad Company and The Wabash Railroad Company; the wires of said Bloomington, Pontiac & Joliet Electric Railway Company to be so placed as not to endanger or inconvenience either the said Illinois Central Railroad Company or said The Wabash

Railroad Company. Said Bloomington, Pontiac & Joliet Electric Railway Company shall furnish, install and maintain the crosing and the crossing frogs, switches and appurtenances to make said temporary crossings at grade as aforesaid, including proper derailing devices, the same to be done in a manner satisfactory to this commission.

It is further ordered that said temporary crossings shall be removed within ninety days from this date, and if not so removed, the said Illinois Central Railroad Company and the said The Wabash Railroad Company may upon twenty-four hours notice to said Bloomington, Pontiac & Joliet Electric Railway Company tear up and remove the same; unless in the meantime this commission makes order to the contrary.

It is further ordered that if for any cause not due to the fault or neglect of said Bloomington, Pontiac & Joliet Electric Railway Company, it is unable to complete said underground crossing within ninety days, then it may apply to this commission for an extension of time for a completion of the same, and an extension of time for the maintenance of the temporary crossing or crossings hereinbefore mentioned.

Said Bloomington, Pontiac & Joliet Electric Railway Company shall be liable to said Illinois Central Railroad Company and the said The Wabash Railroad Company for all loss or damage to persons or property that may occur by reason of the construction or maintenance of the temporary crossing aforesaid, or by reason of failure or neglect on the part of the Bloomington, Pontiac & Joliet Electric Railway Company to comply with the terms and conditions of this order.

[Signed] J. S. NEVILLE, *Chairman.*
ARTHUR L. FRENCH, *Commissioner.*

Springfield, Ill., April 1, 1905.

Citizens of Fairfield, Illinois,

vs.

Southern Railway.

Insufficient train service.

April 5, 1905. Complaint filed and copy served upon respondent company.
April 25, 1905. Complaint dismissed by petitioners with permission to reinstate.

Thomas Aiken,

vs.

Railroad and Warehouse Commission.

Injunction to prevent the Railroad and Warehouse Commission and its grain inspectors from grading Pacific Coast wheat as "Red Winter Wheat."

May 6, 1905. Temporary writ of injunction served on commission.
May 16, 1905. Case heard before circuit court at Edwardsville, upon motion to dismiss the injunction. Case dismissed.

Danville & Indiana Harbor R. R. Co.

vs.

The Chicago Southern R. R. Co.

Petition to prescribe place where and the manner in which a crossing between the above named roads shall be made, near Danville, Vermilion county, Illinois.

May 4, 1905. Petition filed and copy served on respondent company.
May 6, 1905. Petition dismissed on request of petitioner. Crossing made by agreement.

Illinois Northern Ry. Co.,

vs.

Chicago & Illinois Western Ry. Co.

Petitioners object to a grade crossing near Corwith and request the commission to decide the place where and the manner in which crossing shall be made.

May 15, 1905. Petition filed.
May 15, 1905. Respondent company served with copy of petition.
May 25, 1905. Commission viewed place of proposed crossing.
June 8, 1905. Case on call for hearing and postponed by agreement. Case still pending.

The St. Louis Hay & Grain Co.,

vs.

Chicago, Burlington & Quincy Ry. Co.
Chicago, Peoria & St. Louis Ry. Co.
Cleveland, Cincinnati, Chicago & St. Louis Ry. Co.
Chicago & Alton Ry. Co.
The Wabash R. R. Co.
Toledo, St. Louis & Western R. R. Co.
Baltimore & Ohio Southwestern R. R. Co.
Terre Haute & Indianapolis R. R. Co.
Southern Ry. Co.
Wiggins Ferry Co.
East St Louis Connecting Ry. Co. and
Illinois Central R. R. Co.

Complaint charging $2.00 reconsignment charge at East St. Louis as illegal.

May 31, 1905. Complaint filed and respondent companies served with copy.
July 13, 1905. Amended petition filed.
July 19, 1905. Case heard at St. Louis, Mo., and argument on behalf of complainants to be filed by brief.
Case still pending.

St. Louis Hay & Grain Co.,

vs.

Southern Ry. Co.
East St Louis Connecting Ry. Co.
The Central Car Service Association.

Excessive car service charge and discrimination.

June 28, 1905. Complaint filed and respondent companies served with copy.
July 19, 1905. Case heard at St. Louis, Mo.
Dec. 5, 1905. Case dismissed on request of complainant.

Macoupin County Railway Company,

vs.

The St. Louis & Springfield Railway Company.

Petition objecting to a grade crossing near Benld, and asking the commission to decide the place where and the manner in which a crossing shall be made.

July 1, 1905. Petition filed and respondent company served with copy.
Petition dismissed on request of petitioners and crossing made by agreement.

Chicago & Alton Railway Company,

vs.

Springfield & St. Louis Railway Company.

In the matter of a crossing at Iles, Sangamon County.

The following order is entered by agreement of the parties hereto:

The petition of the Chicago & Alton Railway Company to cross the right of way and tracks of the Springfield & St. Louis Railway Company is hereby granted and the place and manner of said crossing is fixed as follows to-wit:

1. Said crossing shall be made near the line between sections eight (8) and nine (9), township fifteen (15) north, range five (5) west of the third P. M., Sangamon county, Illinois, near the southwest corner of said section nine.

2. The right of way and tracks of the Springfield company shall be depressed at a one per cent grade so that at the point of crossing the top of the rails of the Springfield company shall be a height not tto exceed ten (10) feet below the present height of the rail of the said Springfield company.

3. The tracks of the Alton company shall be carried over and above the track and right of way of the Springfield company upon such a grade as the Alton company may elect and to such a height as shall give sixteen (16) feet clear head room above the top of rails of the Springfield company's track as depressed as aforesaid. The tracks of the Alton company shall be upheld at said point of crossing by steel bridges upon concrete abutments. The width measured perpendicularly between abutments shall be twenty-five (25) feet.

For the purpose of draining the depressed right of way of the Springfield company, there shall be laid a line of ten (10) inch vitrified tile along the line to be mutually agreed upon. The same shall be laid in accordance with the city specifications for sewer building of the city of Bloomington by a contractor to be mutually selected by the parties hereto and under the supervision of the duly authorized agent of the Springfield company.

The entire cost of furnishing and laying said drain shall be borne by the Alton company.

5. The Springfield company, shall at its own expense furnish the additional right of way made necessary by the depression of its said tracks.

6. All other expense in connection with the depressing the right of way and tracks and of the re-surfacing and re-ballasting of the tracks of the Springfield company, and of the building of said bridge and abutments and the approaches thereto, shall be borne by the Alton company.

7. The said bridges and abutments shall be maintained by the Alton company and said tile drain maintained by the Springfield company.

8. The excavation for the lowering of the Springfield company's track shall be of such width as to admit of a second track in and through said cut. The Alton company may use the material taken from said excavation.

Alton to pay cost, including cost of the commission.

[Signed] J. S. Neville, *Chairman.*
Arthur L. French, *Commissioner.*

Springfield, Illinois, July 5, 1905.

Amended Order in the Carlinville Crossing Case.

The Chicago & Alton Ry. Co.

vs.

The Springfield & St. Louis Ry. Co.

It is ordered that the time in the order heretofore made on the 6th day of October, 1904, as provided in the eighth clause of said order shall be extended to January 1, 1906.

It is further ordered that the subway, as provided in said order, may be moved north from the present proposed location to any point between the

proposed location and Lotz highway crossing which is the first highway crossing north, by the said Springfield & St. Louis Railway Company. The order is in every other respect to remain as originally entered.

[Signed] J. S. NEVILLE, *Chairman.*
ARTHUR L. FRENCH, *Commissioner.*

Springfield, Illinois, July 5, 1905.

Vandalia R. R. Co.

vs.

Chicago, Bloomington & Decatur Ry. Co.

Petition objecting to a crossing at grade and requesting the commision to prescribe the place where and the manner in which a crossing shall be made at Maroa.

July 19, 1905. Petition filed and respondent company served with a copy of petition.

July 29, 1905. Place of the proposed crossing viewed by the commission. Crossing made by agreement.

Marion & Harrisburg Railway Company,

vs.

Illinois Central Railroad Company,
Chicago & Eastern Illinois Railroad Company and
The Chicago, Paducah & Memphis R. R. Co.

Petition to cross at grade near Marion, Illinois, and requesting the commission to decide the place and manner of crossing.

August 30, 1905. Petition filed and respondent companies served with copy of petition.

Nov. 21, 1905. Case heard and taken under advisement.

Case still pending.

Cleveland, Cincinnati, Chicago & St. Louis Railway Co.

vs.

St. Louis & Northeastern Railway Co.

Petition objecting to a grade crossing at Gillespie and requesting the commission to decide the place where and the manner of crossing.

August 23, 1905. Petition filed and respondent company served with copy of petition.

Sept. 5, 1905. Place of proposed crossing viewed by commission.

Case still pending.

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

Sandoval Coal and Mining Company, *Petitioner,*

vs.

The Baltimore & Ohio S. W. R. R. Co., *Respondent.*

Complaint for overcharge in switching coal.

ORDER OF THE COMMISSION.

This complaint was filed by the petitioner, the Sandoval Coal and Mining Company, against the Baltimore & Ohio Southwestern Railroad Company, for charging its schedule rate of 25 cents a ton for switching coal from their

mine to the Sandoval Zinc Company, a distance of about 2,300 feet. The railroad company claimed that the moving of coal between the two points was not a switching charge but was a direct haul of less than two miles, as provided for by the commissioners' schedule and that they were allowed to charge the schedule rate of 25 cents per ton.

After hearing all the evidence in the case, the commission is of the opinion that the movement was a switching charge as set forth by Rule No. Twenty-three (23) which reads as follows:

"The reasonable maximum rate for switching loaded cars for distances not exceeding three miles, shall be $2.00 per car. Switching includes the hauling of loaded cars from the station yards, side tracks, elevators or warehouses to the junctions of other railroads when not billed from stations on its own road to said junctions, and from junctions of other railroads to the stations, side tracks, elevators and warehouses situated on the tracks owned or controlled by the railroad company doing said switching; it is that transfer charge ordinarily made for moving loaded cars for short distances for which no regular way-bill is made, and which do not move between two regularly established stations on the same road."

And, we are therefore of the opinion that the charge of 25 cents per ton is an unjust discrimination against the petitioner, the Sandoval Coal and Mining Company.

[Signed] J. S. NEVILLE,
Chairman.

Springfield, Ill., Sept. 5, 1905.

Northern & Southern Illinois Railroad Company.

vs.

St. Louis, Iron Mountain & Southern Railway Company.

Petition to cross at grade near Herrin, Ill., and requesting the commission to decide the place where and the manner of crossing.

Sept. 7, 1905. Petition filed and respondent served with a copy of the petition.

Sept. 13, 1905. Place of proposed crossing viewed by the commission.

Oct. 5, 1905. Case heard and continued by agreement.

Settled by agreement.

Illinois Central Railroad Company,

vs.

St. Louis & Springfield Traction Co. and St. Louis & Northeastern Ry. Co.

Petition objecting to a crossing at grade near Litchfield, Ill., and requesting the commission to prescribe the place where and the manner in which a crossing shall be made.

Sept. 13, 1905. Petition filed and respondent company served with a copy of the petition.

Oct. 10, 1905. Place of the proposed crossing viewed by the commission.

Case still pending.

Chicago, Burlington & Quincy Railway Company,

vs.

St. Louis & Springfield Railway Co. and the St. Louis & Northeastern Ry. Co.

Petition objecting to a crossing at grade near Litchfield, Ill., and requesting the commission to prescribe the place where and the manner in which a crossing shall be made.

Sept. 13, 1905. Petition filed and respondent served with a copy of the petition.

Oct. 10, 1905. Place of proposed crossing viewed by the commission.

Case still pending.

Cleveland, Cincinnati, Chicago & St. Louis Railway Company,

vs.

St. Louis & Northeastern Railway Company.

Petition to prevent a crossing at grade near Litchfield, Ill.

Oct. 13, 1905. Petition filed and respondent company served with a copy of petition.

Nov. 7, 1905. Case set for hearing.

Case still pending.

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

The Rockford Belt Railway Company,

vs.

The Illinois Central Railroad Company.

Petition for Grade Crossing in the City of Rockford.

APPEARANCES:

HENRY C. WOOD and A. D. EARLY, for Petitioner.
JOHN G. DRENNAN and J. M. DICKINSON, for the Illinois Central Railroad Company.

Petition was filed by the Rockford Belt Railway Company to cross at grade the tracks of the Illinois Central Railroad Company at a point within the city limits of the city of Rockford, Illinois. Notice was given to the defendant, the Illinois Central Railroad Company, of the filing of the petition and they filed their answer denying the right of the petitioner to cross their tracks at grade, and the commissioners, after having notified both parties, viewed the ground and set the case for hearing at their office in Springfield, Illinois, on the 18th day of July, 1905, and after a full hearing of the evidence, the argument of counsel of the respective parties, and after a second viewing of the premises, and having fully investigated the facts and with due regard to the safety of life and property, have determined that the prayer of the petitioner for a grade crossing should not be granted and have decided that the proper place of crossing is at a point about three hundred and fifty (350) feet east of the point of the frog connecting the Illinois Central Belt tracks with its main track and that the manner in which said crossing shall be made shall be by means of a subway, with a clearance of not less than seventeen (17) feet between the lower part of the bridge of the Illinois Central tracks and the top of the rails of the Rockford Belt Railway tracks directly under said bridge.

It is therefore ordered and directed by the commission that petitioner raise or cause to be raised the roadbed and tracks of the said Illinois Central Railroad Company at said place of crossing as follows: Not more than five (5)

feet at the place of crossing and to grade the same down in each direction so that the grade of said Illinois Central Railroad Company's tracks will not be more than a five-tenth grade and to construct or cause to be constructed at said crossing a standard steel bridge with concrete abutments, both bridge and abutments to be of the best kind and the proper size, such as is used by all first class railroads in the State of Illinois in the construction of first class roads, with a clearance of seventeen (17) feet. All of said work to be completed within one year from this date.

It is further ordered that the expense connected with or in any way pertaining to said crossing and the structure and the future maintenance and repairs necesitated thereby shall be borne by the petitioner, its successors or assigns.

The respondent, the Ilinois Central Railroad Company, hereby before this commission agrees that if the Rockford Belt Railway Company shall faithfully and fully carry out and perform each and every of its obligations, duties and conditions in this order prescribed, that it will waive all proceedings on the part of the Rockford Belt Railway Company to acquire said right of crossing under the eminent domain laws of this State.

And the Rockford Belt Railway Company hereby stipulates and agrees that it accepts and agrees to this order in every respect.

The commission hereby reserves to itself, jurisdiction of the parties and subject matter hereof until the full completion of the matters and things set forth for the purpose of carrying into full force and effect the terms and provisions of this order: *Provided, however,* that during the continuance of said work and for the period of one year said petitioners shall have the right to cross the main tracks of the Illinois Central Railroad Company in the mode and manner now being used by it and at the compensation now in force and effect.

It is further ordered that the costs and expenses of this proceeding, including the expenses of the commission, shall be borne by the petitioner.

[Signed] J. S. NEVILLE, *Chairman.*
ARTHUR L. FRENCH, *Commissioner.*

O. K. Rockford Belt Railway Company by HENRY C. WOOD, its Attorney.
O. K. J. G. DRENNAN, Attorney Ilinois Central Railroad Company.

Toledo, St. Louis & Western R. R. Co.

vs.

Danville, Urbana & Champaign Ry. Co.

Petition for protection of a crossing near Ridge Farm, Vermilion county, Ill., and requesting the commission to inspect the crossing with a view to its protection by interlocking device.

Oct. 30, 1905. Petition filed and respondent company served with a copy.
Nov. 14, 1905. Place of proposed crossing viewed by the commission.
Dec. 5, 1905. All parties interested present and case taken under advisement.
Case still pending.

Chicago & Eastern Illinois R. R. Co.

vs.

Chicago Heights Street Ry. Co.

Petition objecting to a crossing at grade at 16th St., Chicago Heights, Ill.

Nov. 16, 1905. Petition filed and respondent company served with a copy of petition.
Nov. 8, 1905. Place of proposed crossing viewed by the commission.
Dec. 5, 1905. Case dismissed on request of petitioner.

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

Illinois Central R. R. Co., a Corporation,

vs.

Union County Traction & Power Co., a Corporation.

ORDER.

This cause coming on to be heard upon the petition filed herein by the Illinois Central Railroad Company, asking that an order be entered prescribing the place where and the manner in which crossing shall be made by the Union County Traction & Power Company in the public streets of the city of Anna, in the county of Union and State of Illinois, over the line of railroad of the Illinois Central Railroad Company in said city; and the Union County Traction & Power Company having appeared specially herein and filed a plea to the jurisdiction of this commission, and the commission having considered the matter upon said petition, and being now fully advised in the premises, it is thereupon

Ordered, adjudged and decreed by the commission, that said Union County Traction & Power Company be, and it is hereby ordered and directed to make its crossing of the right of way of the Illinois Central Railroad Company at or near the point of crossing shown upon the blue print hereto attached by the yellow lines upon said blue print crossing said right of way, if said Illinois Central Railroad Company shall give such crossing privileges shown on said blue print; that said crossing shall be an under-crossing and shall be constructed at the sole expense of the defendant within six months from the date of entry of this order, unless the Union County Traction & Power Company shall apply for and obtain an extension of said time for constructing the same by reason of the inability of said Union County Traction & Power Company to acquire the right to construct approaches to said point of crossing, or for any other reason interfering with the construction of said crossing or making necessary delay therein. In operating its trains over said temporary crossing, defendant's employés shall obey the signs of the plaintiff's flagman when at said crossing.

It is further ordered, adjudged and decreed that pending the construction of said under-crossing, said Union County Traction & Power Company be, and it is hereby given the right to cross with its tracks the tracks of the Illinois Central Railroad Company at grade upon the public streets known as Main street and Franklin street, being continuations each of the other in an easterly and westerly direction and together forming the principal business street of the city of Anna, the junction of said streets being at the middle of the right-of-way of the Illinois Central Railroad Company, said crossing being in pursuance of an ordinance granted by the city of Anna to said Union County Traction & Power Company; and it is further ordered that said crossing be made at its own expense in accordance with the plans of the Union County Traction & Power Company, to be approved by the Illinois Central Railroad Company on three days' notice, authorized by said city of Anna, and that said track when constructed shall follow the route shown upon the blue print hereto attached and extending across the right of way of the Illinois Central Railroad Company at a point to the west of the proposed under-crossing. The defendant shall pay the cost of this proceeding.

The commission further reserves jurisdiction of this case for the purpose of entering such other orders as may be necessary or desirable in the premises.

Dated at Springfield, Ill., Nov. 7, 1905.

J. S. NEVILLE, *Chairman.*
ARTHUR L. FRENCH, *Commissioner.*

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

The Alton Lime & Cement Company

vs.

The Chicago, Peoria & St. Louis Railway Company.

Complaint for overcharge. Before the Commission Oct. 3, 1905.

ORDER.

APPEARANCES:

J. F. MCGINNIS, for Complainant.
H. L. CHILD, for Defendant.

This was a complaint filed by the Alton Lime & Cement Company against the Chicago, Peoria & St. Louis Railway Company, for overcharges for switching stone from their quarry to the transfer switch and delivering it to the other railroads in the city of Alton.

It was admitted by the said railroad company that the quarry was within three miles of the transfer switch where the cars were delivered to the other railroad companies, but they sought to defend their action by showing that the cars now used were much larger than the cars that were in use at the time of the adoption of the rule. This we do not think is a defense. The rule is still in force and the charging of more than two dollars ($2.00) for the service rendered as shown by the evidence in this case, was a clear violation of Rule No. 23 and in our opinion it was an overcharge which they had no authority to make.

It is therefore ordered by the commission that the Chicago, Peoria & St. Louis Railway Company, by charging and collecting from the complainant more than two dollars ($2.00) a car for switching cars from their quarry to the transfer switch and delivering to other railroad companies, which is only about half a mile, have made an unjust charge and are guilty of extortion.

Springfield, Ill., Nov. 11, 1905.

[Signed] J. S. NEVILLE, *Chairman.*
ARTHUR L. FRENCH, *Commissioner.*

Michigan Central Railroad Company

vs.

Chicago & Southern Traction Company.

Petition filed objecting to the place and manner of crossing at West End avenue, Chicago Heights, Ill., and requesting the commission to prescribe the place where and the manner in which a crossing shall be made.

Dec. 5, 1905. Petition filed and respondent served with a copy of petition.
Jan. 4, 1906. Case set for hearing in Chicago. Case continued by aggreement until Jan. 25, 1906.
Case still pending.

Illinois Central Railroad Company

vs.

Chicago, Bloomington & Decatur Railway Company.

Petition objecting to the place and the manner of a crossing at Clinton, Ill., and requesting the commission to prescribe the place where and the manner in which crossing shall be made.

Feb. 3, 1906. Petition filed and respondent company served with copy of petition.

Bolivia Farmers' Grain Company,

vs.

The Cincinnati, Hamilton & Dayton Railway Company.

Petition for track connection.

ORDER.

Petition was filed in the above entitled cause before this commission on Nov. 23, 1905, and the site of the proposed side track was viewed by the commission Dec. 12, 1905.

Case set for hearing at the office of the Railroad and Warehouse Commission, Springfield, Ill., Tuesday, Jan. 2, 1906 at 10:00 o'clock a. m.

Tuesday Jan. 2, 1906. Case coming on to be heard:

APPEARANCES:

CHAS. A. PRATER, for Petitioners.
JAMES M. GRAHAM, for Respondents.

The respondents in the case asked for a postponement which was agreed to by the complainant, and the case continued to Tuesday, Jan. 16, 1906.

Tuesday, Jan. 16, 1906. Case again coming on to be heard. Complainants being represented by Chas. A. Prater, respondent company not being represented.

The commission now being fully advised and the facts showing that the Bolivia Farmers' Grain Company is a corporation doing business as an elevator company, buying, receiving, storing, selling and shipping grain and are entitled under the statutes of the State of Illinois to be permitted to connect and maintain a connection with the track of the Cincinnati, Hamilton & Dayton Railway at or near its elevator at Bolivia;

It is therefore ordered by the commission, that the Bolivia Farmers' Grain Company be permitted to make connections with the track of the Cincinnati, Hamilton & Dayton Railway Company at a point on said railway approximately three hundred and sixty (360) feet east of the public highway which crosses the tracks of the Cincinnati, Hamilton & Dayton Railway Company just west of its depot at Bolivia with a track to be built by the said Bolivia Farmer's Grain Company for the purpose of receiving and shipping grain and coal and other materials as provided by the constitution and statutes of the State of Illinois, and that in making said connection, that they shall do the same in a way that will not unnecessarily interfere with the tracks and traffic of the said Cincinnati, Hamilton & Dayton Railway Company.

That they shall give reasonable notice to the said Cincinnati, Hamilton & Dayton Railway Company of their intention so to do.

[Signed] J. S. NEVILLE, *Chairman.*
A. L. FRENCH, *Commissioner.*

Springfield, Ill., Jan. 16, 1906.

Chicago & Southern Traction Company, *Complainant.*

vs.

Illinois Central Railroad Company, *Defendant.*

Petition for crossing.

ORDER.

This case coming on to be heard upon the petition of complainant and the answer of the defendant, the commission finds both complainant and defendant are commercial railroads; that it has jurisdiction of the subject matter of this case and of the parties thereto. The commission having viewed the ground where the proposed crossing is desired; having given all parties interested an opportunity to be heard; after full investigation, and with due regard to safety of life and property, finds that a grade crossing such as is

desired by the petitioner will unnecessarily impede and endanger the business and travel upon both of said railroads where petitioner desires to cross; and, therefore, further finds that said crossing should be by means of a subway at or near 157th street in the city of Harvey, Cook county, Illinois.

It is therefore ordered and adjudged by this commission, that the place of said proposed crossing shall be at or near 157th street in the city of Harvey; and the manner in which said crossing shall be made shall be by means of a subway as follows:

Petitioner, Chicago & Southern Traction Company shall raise or cause to be raised, at its own expense, at the place of said proposed crossing, without materially interfering with the traffic thereon, the roadbed and railroad tracks of the Illinois Central Railroad Company not to exceed four and eight-tenths feet where the tracks of the Chicago & Southern Traction Company shall cross under the tracks of the said Illinois Central Railroad Company at or near 157th street in said city of Harvey. In raising the tracks and roadbed of the defendant company, the grade shall run level from said 157th street south until it intersects the present grade of the tracks of the defendant company, and the two grades shall be connected by an easy vertical curve. From the point of the proposed crossing north the grade shall descend on a three-tenths per cent grade until it intersects the present grade of the roadbed and tracks of the defendant company at or near 155th street in said city of Harvey, which two latter grades shall also be connected by an easy vertical curve.

The petitioner, Chicago & Southern Traction Company, shall put in said subway of said proposed crossing at its maximum depth the entire width of the tracks of said Illinois Central Railroad Company as they are now located; and if the said Illinois Central Railroad Company shall at any time hereafter desire to lay additional tracks over and across said subway on its said lands, the Chicago & Southern Traction Company, or its successors, shall extend said subway at its maximum depth such distance as shall be necessary therefor, so that in the end, if the Illinois Central Railroad Company desires so to do, it may have the use of the entire width of its right of way and lands at said proposed crossing without interference on the part of said Chicago & Southern Traction Company, or its successors. The walls and abutments of said subway shall in the first instance be built to extend the full width of the tracks as now located, and shall be extended from time to time as said Illinois Central Railroad Company shall desire to lay additional tracks thereon, all of which work in and about the construction of said subway and the bridge thereon, and the maintenance and repair thereof, shall be done or caused to be done at the expense of the Chicago & Southern Traction Company or its successors.

All the plans for the raising of said tracks of the defendant company and the building of said bridge, walls, abutments and appurtenances thereto, and all work now or hereafter done in connection with said crossing, so far as it affects the defendant company, shall be submitted to and approved by the defendant company, subject to the approval of this commission, or its duly authorized engineer or representative and if the parties fail to agree, then to be decided by the commission.

It is further ordered and adjudged by this commission that the parties to this proceeding may by agreement cause said crossing to be made at any other point in the vicinity of Harvey, Illinois, that may be agreeable to the parties hereto, provided, that the crossing so agreed upon shall be either by means of a subway or viaduct, to the end that there shall be a separation of the grades of said railroads wherever said crossing shall be made.

This commission is advised that the defendant company is willing to permit the complainant to cross its said tracks at the place desired temporarily and until Dec. 31, 1906, in accordance with a contract which has been submitted to this commission for inspection. It is therefore further ordered and adjudged by this commission, that the complainant shall protect said temporary crossing by interlocking or other safety appliance to be approved by this commission, to the end that it shall not be necessary for the defendant company to cause its trains to be stopped in approaching said crossings, and if for any reason the petitioners are unable to complete the said subway by the 31st day of December, 1906, then they may apply for an extension of time and if good cause is shown, the commission may extend the time.

It is further ordered and adjudged by this commission, that the petitioner, Chicago & Southern Traction Company, shall bear all costs and incidental expenses incurred in the investigation thereof by the Board of Railroad and Warehouse Commissioners of the State of Illinois in accordance with the statutes in such cases made and provided.

[Signed] J. S. NEVILLE, *Chairman.*
A. L. FRENCH, *Commissioner.*

Springfield, Ill., Jan. 18, 1906.

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

The Wabash R. R. Co.
Baltimore & Ohio Southwestern R. R. Co.
Chicago & Alton Ry. Co.
Atchison, Topeka & Santa Fe Ry. Co.
Chicago, Peoria & St. Louis Ry. Co. of Ill.
Chicago, Burlington & Quincy Ry. Co.
Toledo, St. Louis & Western R. R. Co.
Chicago & Eastern Illinois R. R. Co.
Cleveland, Cincinnati, Chicago & St. Louis Ry. Co.
Chicago, Rock Island & Pacific Ry. Co.

Petition for Modification of Rule 23.

Petition filed Oct. 27, 1905, asking for modification of Rule 23 to read "ten cents per ton with a minimum charge of $2.00 per car for switching loaded cars for a distance of not to exceed three miles."

Prayer of petitioners granted by order of the commission of date June 5th, 1906, as evidenced by Rule 23 in Classification No. 10.

Charles R. Price Company,

vs.

Illinois Central R. R. Co.

Petition Alleging Discrimination.

Petition filed Dec. 26th, 1905, alleging discrimination. Case set for hearing before the commission in Chicago, Jan. 4th, 1906. Continued by agreement to Jan. 25, 1906.

Settled by agreement.

Louisville & Nashville R. R. Co.

vs.

St. Louis & Northeastern Ry. Co.

Petition Objecting to Grade Crossing.

Petition filed Jan. 20, 1906, objecting to grade crossing at Fifteenth street, in East St. Louis.

Case set for hearing before the commission Aug. 7th, 1906.
Case postponed without date. Case still pending.

Illinois Central R. R. Co.

vs.

Chicago, Bloomington & Decatur Ry. Co.

Petition Objecting to Grade Crossing.

Petition filed Feb. 3rd, 1906, objecting to grade crossing at Clinton, Illinois.
Case still pending.

Illinois Central R. R. Co.

vs.

Aurora, Elgin & Chicago Ry. Co.

Petition Objecting to Grade Crossing.

Petition filed Feb. 9th, 1906, objecting to grade crossing at Hillside, Cook county.
Case still pending.

Illinois Central R. R. Co.

vs.

Herrin & Carterville Ry. Co.

Petition Objecting to Grade Crossing.

Petition filed Feb. 16th, 1906, objecting to grade crossing near Herrin, Ill.
Case set for hearing before the commission April 18th, 1906.
Continued to April 21st, 1906.
Settled by agreement by parties interested.

Alton Line & Cement Co.

vs.

Chicago, Peoria & St. Louis Ry. Co.

and

Mississippi Valley Coal Co.

vs.

C., P. & St. L. Ry. Co.

Petition Complaining of Excessive Switching Charges.

Petition filed Nov. 20th, 1905, complaining of excessive switching charges.
Case set for hearing before the commission Dec. 5th, 1905.
Continued without date.
Case still pending.

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

Michigan Central Railroad Company

vs.

Chicago & Southern Traction Company.

Petition re-crossing.

This matter coming on before the Railroad and Warehouse Commission of the State of Illinois upon the petition filed herein by the Michigan Central Railroad Company for an order designating the manner and place of crossing of its tracks by the defendant, the Chicago & Southern Traction Company, at or near West End avenue, in the city of Chicago Heights, county of Cook, and State of Illinois, and upon the answer of the defendant, the Chicago & Southern Traction Company, filed herein;

And the commission having jurisdiction of the subject matter of the parties hereto and having heard the evidence and arguments of counsel, hereby order that the Chicago & Southern Traction Company shall cross the tracks of the Michigan Central Railroad Company at or near West End avenue by means of an undercrossing, the clearance of which shall be sufficient to be safe for all parties connected with either of said companies, and that the said Chicago & Southern Traction Company shall construct said undercrossing at its own expense, such as is used by all first class railroads for such purposes, and that said undercrossing is to be completed within one year from the first day of May, 1906, and that from now until the said first day of May, 1907, it is ordered that the Michigan Central Railroad Company shall allow the said Chicago & Southern Traction Company to cross its said tracks at grade and said Chicago & Southern Traction Company shall construct and maintain a first class de-rail at said crossing while the said grade crossing is in use, and that at the expiration of said time, to-wit, the first day of May, 1907, said Chicago & Southern Traction Company shall remove said grade crossing and de-rail and thereafter shall cross said tracks by means of an undercrossing.

It is further ordered that the parties hereto may agree as to how said undercrossing shall be made, provided always that the same is to be completed and in operation as above set forth, by the first day of May, 1907.

Provided, further, that if for any good reason the said Chicago & Southern Traction Company are unable to fully complete said work by the first of May, 1907, that they have the right, before that time, to apply to this commission for an extension of time in which to complete said crossing. It being the intention of this order that the Illinois Railroad and Warehouse Commission shall retain jurisdiction herein of the subject matter and the parties to this proceeding until said undercrossing is fully completed.

It is further ordered, that the said Chicago & Southern Traction Company shall pay the costs of this proceeding, including the expenses of the commission.

[Signed] J. S. NEVILLE, *Chairman.*
ARTHUR L. FRENCH, *Commissioner.*

Springfield, Ill., March 14, 1906.

Louisville & Nashville Railroad Company, Petitioner,

vs.

Baltimore & Ohio Southwestern Railroad Company.

Protection of Crossing at Enfield, Illinois.

ORDER OF THE COMMISSION.

And now, on the 18th day of March, A. D. 1906, comes the Louisville & Nashville Railroad Company, petitioner, in the above entitled case, and files its petition for the protection of grade crossing at Enfield, White county, Ill., against the respondent, the Baltimore & Ohio Southwestern Railroad Company, and notice is issued by said Railroad and Warehouse Commission to said Baltimore & Ohio Southwestern Railroad Company, respondent, notifying it of the filing of such petition, and it is ordered by said commission that the hearing of said petition be set for Tuesday, April 10th, A. D. 1906.

And now, on this 10th day of April, A. D. 1906, comes the Louisville & Nashville Railroad Company, petitioner, by its attorney, J. M. Hamill, and the Baltimore & Ohio Southwestern Railroad Company, respondent, by its attorney, W. L. Shutt, and the petition heretofore filed by said Louisville & Nashville Railroad Company, petitioner, against said Baltimore & Ohio Southwestern Railroad Company, respondent, comes on for final hearing and determination upon the petition of the Louisville & Nashville Railroad Company heretofore filed before said commission, and the commission having, as required by the statutes, gone upon the premises and personally viewed said crossing, and having heard all the evidence and statements introduced both by petitioner and respondent, and the statement of the respective superintendents of petitioner and respondent, and the arguments of counsel, and the commission being fully advised in the premises, doth find that the public safety and good requires that the grade crossing at Enfield, White county Illinois, where the Baltimore & Ohio Southwestern Railroad crosses the main track of the Louisville & Nashville Railroad, be protected by an interlocking system. And the commission being now fully advised in the premises, it is thereupon ordered that the petitioner, the Louisville & Nashville Railroad Company, and the respondent, the Baltimore & Ohio Southwestern Railroad Company, forthwith proceed to protect said crossing by the installation of a first class interlocking system, to be built substantially as indicated on plan hereto attached and prayed to be taken and considered as a part hereof, marked Exhibit "A" hereto.

It is further ordered that the interlocking device of said interlocking system shall be located in an extension or addition to the present depot building of the Baltimore & Ohio Southwestern Railroad Company as now situated along its tracks at Enfield, White county, Illinois, said extension or addition to be so constructed as to give an unobstructed view of the tracks in all directions from the crossing to the operator or towerman operating the levers of said device. The locking in the interlocking device may be so arranged that it shall be possible to clear the main track signals of the Louisville & Nashville R. R. Co. for trains in both directions. All plans for said interlocking system shall be submitted to the Railroad and Warehouse Commission in the usual form for final approval before the work of construction shall begin.

It is further ordered that said interlocking system shall be maintained and operated by the Baltimore & Ohio Southwestern Railroad Company.

Said Baltimore & Ohio Southwestern Railroad Company shall furnish a day attendant, whose duty it shall be to operate said interlocking device, and before leaving his duties for the day he shall set up the route for the night trains of the Louisville & Nashville Railroad Company. The Railroad and Warehouse Commission, however, reserves to itself the right to revoke the order relating to the location of the interlocking device, the manner of its operation and division of expenses of maintenance and operating and enter a new order, should they consider it expedient to do so.

It is further ordered that the cost of installation of and maintenance of said interlocking system shall be borne equally between the parties hereto; that the petitioner, the Louisville & Nashville Railroad Company, shall pay as expense of operation of said interlocking system the sum of fifteen ($15.00) dollars per month during each and every month that said system is maintained and operated, and that the balance of the expense of maintenance and operation shall be borne by the respondent, the Baltimore & Ohio Southwestern Railroad Company.

Dated this 20th day of April, A. D. 1906.

[Signed] J. S. NEVILLE, *Chairman.*
A. L. FRENCH, *Commissioner.*

Venice Terminal R. R. Co.

vs.

Danville & Edwardsville Terminal R. R. Co.

Petition Objecting to Place and Mode of Crossing.

Petition filed March 22, 1906, objecting to place and mode of crossing in the city of Venice, Ill.

Hearing set for May 8, 1906. Continued by agreement of both parties in interest without date.

Settled by agreement of both parties.

Geo. W. McCabe, President Board of Trustees of the Village of Chatsworth,

vs.

The Toledo, Peoria & Western Ry. Co.

Petition Complaining of Failure to Switch Cars.

Petition filed April 2, 1906, complaint that the Toledo, Peoria & Western Ry. Co. refuse to switch cars placed on "Y" by the Illinois Central R. R. Co.

Case set for hearing before the commission April 18, 1906.

Case heard May 8, 1906. Statement of facts admitted by both parties. Defendant to file brief.

Case still pending.

The Farmers' Elevator Co. of Lowder

vs.

The Chicago, Burlington & Quincy Ry. Co.

Petition Complaining of Refusal to Furnish Cars.

Petition filed April 6, 1906, complaining that said company refuse to furnish cars for shipment of grain.

Case heard before the commission April 18, 1906.

Case continued without date.

A. J. Weber, Petitioner,

vs.

Illinois Central Railroad Company, Respondent.

APPEARANCES:

D. T. Upchurch, for Petitioner.
John G. Drennan, for Respondent.

Overcharge for Switching.

The petition in this case was filed April 23, 1906, and alleges that the petitioner is the owner and proprietor of a steam flour mill located on a sidetrack of the respondent at Galatia, Ill.; that between Jan. 6, 1905, and March 19, 1906, the petitioner was compelled to pay to the respondent for switching twelve carloads of coal from the mine of the Galatia Coal Company to the petitioner's mill, a distance of less than five hundred yards, a sum in excess of $2.00 per car, and it is claimed that the service rendered was a switching service within the meaning of Rule 23, and that because of such charge the respondent is guilty of extortion.

The answer of the respondent was filed on April 25, 1906, and consists of a general denial of the charges in the petition.

The case came on for hearing before the commission at its office in Springfield on the 15th day of May, 1906. After hearing the evidence in the case and the arguments of counsel, the case was taken under advisement and leave was granted to the parties to file written briefs. No opinion was filed during the lifetime of the late chairman of the commission, Honorable James S. Neville, and because of a change in the personnel of the commission the case was re-argued at the regular December 1906 meeting and submitted on the evidence taken at the former hearing.

The undisputed facts in the case are as follows: The petitioner owns and operates a flour mill adjacent to the respondent's sidetracks at Galatia, Ill. About five hundred yards west of this flour mill and adjacent to the tracks of the respondent is located the coal mine of the Galatia Coal Company. During the period of about one year prior to the filing of the petition in this case the petitioner purchased from the Galatia Coal Company twelve carloads of coal for use at his flour mill. For furnishing the cars and transporting this coal from the coal mine to the flour mill the respondent charged the petitioner for one of the cars $5.00, for five of the cars $7.00, and for six of the cars $7.50 each. There is no dispute between the parties as to the facts, but it is claimed by the respondent that this movement of these cars was not a switching movement within the meaning of Rule 23, but was in fact a "transportation" or "haul" and that it was entitled to charge for such service the maximum allowed by the "Schedule of Maximum Freight Rates" then in force, which was twenty-five cents per ton for hauling coal two miles or less.

Rule 23, at the time when these transactions occurred, read as follows:

"The reasonable maximum rate for switching loaded cars for distances not exceeding three miles shall be $2.00 per car. Switching includes the hauling of loaded cars from the station yards, side-tracks, elevators or warehouses to the junction of other railroads when not billed from stations on its own road to said junctions and from junctions of other railroads to the stations, sidetracks, elevators and warehouses situated on the tracks owned or controlled by the railroad company doing the switching; it is that transfer charge ordinarily made for moving loaded cars for short distances for which no regular way-bill is made and which do not move between two regularly established stations on the same road."

The evidence discloses that the mine of the Galatia Coal Company was not located at any regularly established station and in the movement of these cars no regular way-bills were made. The bills presented by the respondent for this service were the ordinary switching bills.

A number of cases, where the facts appear to be similar to those disclosed by the evidence in this case, have heretofore been passed upon by the commission, and it has been held that the service in question was a "switching service" within Rule 23 above quoted.

It is however, contended by respondent, that Rule 23 has no application whatever to this service; that such rule applies only in cases where there necessarily preceded or succeeded such service the payment of freight for transportation over some line of railway, and the case of Dixon vs. Central of Georgia Railway Company, 110 Ga. 173, is, among others, cited as an authority on this point. In that case the rule of the Railroad Commission did not in any way attempt to define what is meant by a "switching" charge, and the Court was, of course, at liberty to hear testimony as to the meaning of that term as it was used in reference to railroad transportation. From a consideration of such evidence the Court found that a "switching" service applied only in cases where there necessarily preceded or succeeded such service the payment of freight for a regular transportation service.

Rule 23 of this commission, however, defines what is meant by a "switching" charge. Among other things it is "that transfer charge ordinarily made for moving loaded cars for short distances for which no regular way-bill is made and which do not move between two regularly established stations on the same road." The evidence in this case brings it squarely within this definition of "switching."

This commission, by virtue of the provisions of the statute, has authority to establish reasonable maximum rates for switching and for the transportation of freight. The rules establishing such rates, when adopted, are binding, not only upon the railroad companies, but upon their patrons and are equally binding upon this commission until such time as they are altered or amended. Such being the case, we are not at liberty to disregard Rule 23 nor the definition of switching as therein contained.

But it is further insisted by respondent that by making two tariffs for a haul of two miles or under, one for "hauling" freight and the other for "switching," the commission necessarily recognizes that for such distance there may be two classes of service for which a different charge may be made.

This is undoubtedly true. There may be a regular transportation or haul for a distance of two miles or under when such haul is between two regularly established stations, and where a regular way-bill is made. It is probably true that there are few instances where the schedule of maximum freight rates would apply for such short distances, but where it does apply the rate allowed by the regular distance tariff may be charged.

On the whole case we are of opinion that the service rendered was clearly within Rule 23 and, therefore, was a switching movement.

Dated at Springfield, Ill., this 4th day of December, A. D. 1906.

[Signed] ARTHUR L. FRENCH, *Commissioner.*
W. H. BOYS, *Commissioner.*

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

Elgin, Joliet and Eastern Railway Company,

vs.

Chicago and Southern Traction Company.

Petition Re-crossing.

This matter coming on before the Railroad and Warehouse Commission of the State of Illinois upon petition filed herein by the Elgin, Joliet and Eastern Railway Company for an order designating the manner and place of crossing of its tracks by the defendant, the Chicago and Southern Traction

Company, at or near West End avenue in the city of Chicago Heights, county of Cook, and State of Illinois; and upon the answer of the defendant, the Chicago and Southern Traction Company filed herein;

And the commission having jurisdiction of the subject matter and of the parties hereto and having heard the evidence and arguments of counsel, hereby order that the Chicago and Southern Traction Company shall cross the tracks of the Elgin, Joliet and Eastern Railway Company at or near West End avenue, by means of an under-crossing, the clearance of which shall be sufficient to be safe for all parties connected with either of said companies, and that the said Chicago and Southern Traction Company shall construct said under-crossing at its own expense, such as is used by all first-class railroads for such purposes and that said under-crossing is to be completed within one year from the first day of May, 1906, and that from now until the said first day of May, 1907, it is ordered that the Elgin, Joliet and Eastern Railway Company shall allow the said Chicago and Southern Traction Company to cross its said tracks at grade and said Chicago and Southern Traction Company shall construct and maintain a first-class de-rail at said crossing while the said grade crossing is in use and that at the expiration of said time, to-wit: The first day of May, 1907, said Chicago and Southern Traction Company shall remove said grade crossing and derail and thereafter shall cross said tracks by means of an under-crossing.

It is further ordered that the parties hereto may agree as to how said under-crossing shall be made, provided always that the same is to be completed and in operation as above set forth, by the first of May, 1907.

Provided, further, that if for any good reason the said Chicago and Southern Traction Company are unable to fully complete said work by the first of May, 1907, that they have the right before that time to apply to this commission for an extension of time in which to complete said crossing. It being the intention of this order that the Illinois Railroad and Warehouse Commission shall retain jurisdiction herein of the subject matter and the parties to this proceeding until said under-crossing is fully completed.

It is further ordered that the said Chicago and Southern Traction Company shall pay the costs of this proceeding, including the expenses of the commission.

Dated at Springfield, Ill., September 13, 1906.

[Signed] ARTHUR L. FRENCH, *Commissioner.*
I. L. ELLWOOD, *Commissioner.*

Edwin Beggs

vs.

Chicago, Burlington & Quincy Railroad Co.

Petition Complaining of Excessive Minimum Weights.

Petition filed May 21, 1906, complaining of the excessive minimum weight on grain shipments.

Case set for hearing before the commission June 5, 1906.

Case still pending.

Chicago & Alton Railway Co.

vs.

Danville & Edwardsville Terminal Railway Co.

Petition Objecting to Crossing.

Petition filed May 21, 1906, objecting to crossing at Venice, Ill.

Place of proposed crossing viewed by the commission May 28, 1906.

Case set for hearing, Jan. 8, 1907.

Case continued to Feb. 5, 1907.

Danville & Edwardsville Terminal Ry. Co.

vs.

Venice Terminal Railway Co.

Petition Objecting to Place and Manner of Crossing.

Petition filed July 14, 1906, objecting to manner and place of crossing at Venice, Ill.

Case set for hearing July 24, 1906. Continued to Aug. 7, 1906. Case settled by agreement of both parties.

Hammond Belt Ry. Co.

vs.

South Chicago & Southern Railroad Company.

Petition to Cross at Grade.

Petition filed July 27, 1906, to cross at grade at Calumet Park, Cook county, Illinois.

Place of proposed crossing viewed by the commission Nov. 13, 1906.

Case set for hearing at Chicago Nov. 23, 1906.

Case continued until Feb. 7, 1907.

City of Staunton

vs.

The Wabash Railroad Company.

Petition Complains of Excessive Switching Charges.

Petition filed July 31, 1906, complaining of excessive switching charges.

Case set for hearing before the commission Sept. 4, 1906.

Case settled by agreement and case dismissed.

Chicago & Alton R. R. Co.
and Chicago, Burlington & Quincy Ry. Co.

vs.

The Jacksonville Railway & Light Co.
and The Illinois Western Ry. Co.

Petition Objecting to Crossing.

Petition filed July 30, 1906, objecting to grade crossing at State street, in Jacksonville, Ill.

Place of proposed crossing viewed by the commission Dec. 19, 1906.

Case set for hearing Jan. 8, 1907.

Case continued to Feb. 5, 1907.

Chicago & Alton Railway Co.

vs.

The Jacksonville Railway & Light Co.
and The Illinois Western Railway Co.

Petition Objecting to Grade Crossing.

Petition filed Aug. 10, 1906, objecting to grade crossing, two and one-half miles south of Jacksonville.

Place of proposed crossing viewed by the commission Dec. 18, 1906.

Case set for hearing Jan. 8, 1907.

Case continued to Feb. 5, 1907.

Ehlebe, Hunt & Co. of Warsaw, Ill.,

vs.

The Toledo, Peoria & Western Ry. Co.

Petition Complaining of Insufficient Train Service.

Petition filed Sept. 15, 1906, complaining of insufficient train service between Hamilton and Warsaw, Ill.

Case postponed indefinitely at request of petitioner.

South Chicago & Southern R. R. Co.

vs.

The Hammond Belt Ry. Co.

Petition Objecting to Crossing at Grade.

Petition filed Nov. 3, 1906, objecting to crossing at grade at Calumet Park, Illinois.

Place of proposed crossing viewed by the commission Nov. 13, 1906.

Case set for hearing Nov. 23 at Chicago.

Case continued to Feb. 7, 1907, at Chicago.

Sandoval Coal & Mining Co.

vs.

Baltimore & Ohio Southwestern Railroad Company.

Petition Asking for Rehearing.

Petition of the B. & O. S.-W. R. R. Co., asking for rehearing in the above case filed.

Case set for hearing Aug. 7, 1906.

Case postponed to Sept. 4, 1906.

Case postponed to Dec. 4, 1906. Petition denied by commission.

Chicago & Alton Railroad Co.

vs.

Springfield & St. Louis Ry. Co.

Petition Objecting to Grade Crossing.

Petition filed Nov. 28, 1906, objecting to grade crossing projected on West street, in the city of Carlinville.

Place of proposed crossing viewed by the commission Dec. 19, 1906.

Case set for hearing Feb. 5, 1907.

Illinois Central Railroad Co.
Baltimore & Ohio Southwestern R. R. Co.
and Southern Ry. Co.

Petition filed Dec. 8, 1906, asking for a modification of rule 23 in the Commissioners' Classification No. 10.

Citizens of Granite City, Ill.,

vs.

Chicago & Alton R. R. Co.
The Cleveland, Cincinnati, Chicago & St. Louis Railway Co.
Chicago, Peoria & St. Louis Ry. Co.
and The Wabash R. R. Co.

Complaint.

Complaint filed Dec. 17, 1906, complaining of lack of proper facilities for handling of freight at that point.

Commission viewed the place and conditions Jan. 15, 1907.

OPINIONS OF ATTORNEY GENERAL

ON

Matters Relating to the Railroad and Warehouse Commission.

Opinions of the Attorney General in Matters Relating to the Railroad and Warehouse Commission.

STATE OF ILLINOIS, OFFICE OF ATTORNEY GENERAL.
SPRINGFIELD, ILL., Jan. 22, 1906.

Honorable William Kilpatrick, Secretary Railroad and Warehouse Commission, Springfield, Illinois:

DEAR SIR:—Your favor of the 10th inst., asking for an opinion as to whether the Acts in regard to safety appliances on railroads and the inspection of safety appliances on railroads, passed at the last session of the Legislature, apply to interurban electric railways, duly received.

The Act in regard to safety appliances on railroads is entitled, "An Act to promote the safety of employés and travelers upon railroads by compelling common carriers engaged in moving traffic by railroad between points in the State of Illinois to equip their cars with automatic couplers and continuous brakes and *their* locomotives with driving wheel brakes, and for other purposes."

Section 1 of this Act provides that from and after its passage it shall be unlawful for any common carrier engaged in moving traffic by railroad between points in this State to use on its line any locomotive not equipped with a power driving wheel brake and appliances for operating the train brake system, or to run any train that has not a sufficient number of cars in it so equipped with power or train brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose.

Sec. 2 provides that it shall be unlawful for any such carrier to haul or permit to be hauled or used on its lines any locomotive, tender, car or *similar* vehicle not equipped with couplers, coupling automatically by impact etc.

Sec. 4 provides that it shall be unlawful for any railroad company to use any locomotive, tender, car or *similar* vehicle that is not provided with secure grab irons or hand holds in the ends and sides of each locomotive, tender, car or *similar* vehicle, etc.

The title of the Act, by using the words, "and their locomotives," would imply that the Act was only in relation to such common carriers as used locomotives.

Section 1 above mentioned relates only to locomotives and to trains of cars that can be controlled by the engineer on the locomotives. This section clearly would not apply to an electric interurban car.

Sec. 2. relates to locomotives, tenders, cars and *similar* vehicles, and I do not think it applies to electric interurban cars.

Sec. 4 likewise relates to grab irons and hand holds in the ends and sides of locomotives, tenders, cars and *similar* vehicles.

Street cars are specifically exempted from the provisions of the Act by section6.

In construing this whole Act, together with its title, I am of the opinion that it has no application to interurban cars operated by electricity.

The Act in regard to the inspection of safety appliances on railroads is entitled, "An Act providing for the inspection of equipment and operation

of safety appliances on railroads engaged in moving traffic between points in the State of Illinois."

Section 1 of this last mentioned Act provides that an inspection of automatic couplers, power brakes and grab irons, or handholds, on railroad locomotives, tenders, cars and *similar* vehicles shall be appointed, etc., and further, that no person shall be eligible to hold the office who, among other things, has not had at least seven years of practical experience on some line of railroad operated in the State of Illinois, in one or more of the following capacities: Engineer, fireman, conductor, yardmaster, brakeman, train baggageman, switchman, car inspector or repairer.

Sec. 4 provides that it shall be the duty of said inspector to inspect the couplers, power brakes, grab irons and hand holds on railroads and make weekly reports to your commissioners, reporting all locomotives, tenders, cars or *similar* vehicles which are found to be defective, etc.

This last mentioned Act was unquestionably passed in order to enforce the provisions of the first mentioned Act, and I am of the opinion that this last mentioned Act has no application to interurban railroads operated by electricity. I think it is plainly apparent, on a consideration of the different provisions of these two Acts, that it was not the intention of the Legislature that they should have any application to interurban railroads or street cars operated by electricity. Yours truly,

W. H. STEAD,
Attorney General.

STATE OF ILLINOIS, OFFICE OF ATTORNEY GENERAL.
SPRINGFIELD, ILL., May 10, 1906.

Honorable William Kilpatrick, Secretary Railroad and Warehouse Commission, Springfield, Illinois:

DEAR SIR—Your favor of the 5th inst. duly received. Section 4 of "An Act to promote the safety of employés and travelers of railroads," etc., provides:

"That from and after the passage of this Act, it shall be unlawful for any railroad company to use any locomotive, tender, car or similar vehicle in connection with the movement of traffic between points in this State, that is not provided with secure grab irons, or hand holds, in the ends and sides of each locomotive, tender, car or similar vehicle, for greater security to men in coupling and uncoupling cars."

You state that a number of railroads have attached these grab irons, or hand holds, underneath the end sills of the car, which make them practically useless for the purpose for which they were intended; and you further state that for the security of the men, the grab irons ought to be in the end or sides of the car, and not underneath. If the railroads place these grab irons underneath the sills of the cars so that they are useless for the purpose for which they were intended, then such railroads have not complied with the terms of said Act. The grab irons and hand holds must be placed in the ends and sides of the cars in such a position that they can be used by the men for greater security in coupling and uncoupling the cars.

Yours truly,
W. H. STEAD,
Attorney General.

STATE OF ILLINOIS, OFFICE OF ATTORNEY GENERAL.
SPRINGFIELD, June 23, 1906.

Honorable William Kilpatrick, Secretary Railroad and Warehouse Commission, Springfield, Illinois:

DEAR SIR—By your letter of May 8, with reference to the controversy between the Illinois Central Railroad Company and the Toledo, Peoria and Western Railway Company, over the interchange of business at Chatsworth, you make the following statement of facts:

"At Chatsworth, Illinois, the Illinois Central Railroad Company is crossed by the Toledo, Peoria and Western Railway Company, and there is a "Y"

connection between the two lines for the interchange of business. On the right-of-way of the Toledo, Peoria and Western Railway Company are located two elevators, several coal sheds and lumber yards, and the property upon which these are located is held by lease from the railroad company. The parties holding these leases, in the transaction of their business, have received consignments in car load lots over the Illinois Central Railroad, which has been set upon the "Y," to be taken from that point by the T., P. & W. Ry. and placed upon the side track of the T., P. & W. Railroad for unloading by the parties to whom they were consigned. The Toledo, Peoria and Western Railway Company have refused to receive these cars and deliver them to the parties to whom consigned."

You submit the question as to whether service of this kind could be demanded of a railroad company.

On the 17th of May I wrote you, requesting a further statement of facts, in the form of answers to certain questions propounded, and I am in receipt of your favor of the 15th inst., in which the following additional particulars are given:

"*First*—The T., P. & W. Ry. Co. have switch tracks at Chatsworth.

"*Second*—The elevators, coal sheds and lumber yards on the right of way of the T., P. & W. Ry. are inside of its yards.

"*Third*—The elevators, coal sheds and lumber yards are also inside of the limits of the village.

"*Fourth*—The 'Y' was constructed jointly by the two railroad companies, and the object of the construction was for the interchange of traffic between the two roads.

"*Fifth*—The 'Y' connects the main tracks of the two railroad companies.

"*Sixth*—The 'Y' is also inside the limits of the village.

You enclose also a map or diagram showing the relative location of the road, the yards, switches, elevators, coal sheds, etc., and the "Y" connection.

Railroad companies engaged in the business of carrying goods and property for hire are common carriers, engaged in the exercise of a public employment and are bound in law to carry, so far as their facilities enable them, whatever is offered for carriage and is properly to be carried if paid for.

Chicago & Alton R. R. Co. vs. *People ex rel, Koerner*, 67 Ill., 11;
Peoria and Rock Island Ry. Co. vs. *The Valley Coal Co.*, 68 Ill., 489.

Aside from constitutions and statutes, on principle, railroads, as common carriers, must receive and transport cars of other roads when tendered under proper conditions, where the gauge is suitable and the cars offered not defective.

Peoria, etc., R. R. vs. *Chicago, etc. R. R. Co.*, 109 Ill., 135;
Indianapolis, etc., R. R. Co. vs. *Flannigan*, 77 Ill., 365;
Toledo, etc., R. Co. vs. *Black*, 88 Ill., 112.

A "Y" connection can not be forced on two roads, but if they voluntarily build them, they may be compelled to receive and deliver cars and exchange freight.

American Railroad Law, page 144;
Peoria & Pekin Ry. Co. vs. *C., R. I. & P. Ry. Co.*, 109 Ill., 135.

The following authorities also bear more or less directly on the question presented:

Peoria, etc., Ry. Co. vs. *Rolling Stock Co.*, 136 Ill., 643; 49 Am. St. Rep., 348;
Chicago, etc., R. R. Co. vs. *Curtis*, 66 Am. Rep., 463; 50 Am. Rep., 605;
Vermont, etc., R. R. Co. vs. *Fitchburg R. R. Co.*, 14 Allen, 462; 92 Am. Dec., 785;
Machin vs. *Boston, etc., R. R. Co.*, 135 Mass., 201; 46 Am. Rep., 456; 96 Am. Dec., 742;
C. & N. W. Ry. Co. vs. *Stantro*, 87 Ill., 195.

I do not think these railroad companies could have been compelled to connect their roads by the "Y," but having done so and now having the facilities for the interchange of business, I am of the opinion such service

as is required in the case submitted may be demanded, and that it is the plain duty of the Toledo, Peoria and Western Railway Company, under the conditions described, to take such cars off the "Y" and deliver same to consignee, the proper charge for such service being paid or tendered.

Very respectfully yours,

W. H. STEAD,
Attorney General.

STATE OF ILLINOIS, OFFICE OF ATTORNEY GENERAL.
SPRINGFIELD, July 6, 1906.

Honorable William Kilpatrick, Secretary Railroad and Warehouse Commission, Springfield, Illinois:

DEAR SIR—I am in receipt of your favor of the 3d inst., enclosing a letter from B. H. Lawson of Etna, Illinois, which submits certain facts upon which you desire the opion of this office.

About twenty years ago the village of Etna petitioned the Illinois Central Railroad Company to erect a depot and furnish a telegraph operator at that point. Said Illinois Central Railroad Company promised that if the citizens of Etna would donate $200.00 and furnish teams free to grade and extend the switch, the peition of the citizens would be granted. Two hundred dollars was donated and the switch grades were extended. A telegraph operator was placed in charge of the depot and is continued to this day. It is now proposed by the Illinois Central Railroad Company to remove the telegraph office and employ some local man to take care of the freight. Mr. Lawson sets up the amount of business transacted at this station, showing the number of cars of corn, oats, hay and straw, live stock, broom corn and household goods shipped from said station during the year 1905. It also appears that two grain elevators have been erected at said point. Bids for grain are usually received on the early morning train, with requests of the bidders, if accepted, to answer by wire. The question submitted in your letter is, "Can the Warehouse and Railroad Commission compel the Illinois Central Railroad Company to retain at this point a telegraph office?"

I am of the opinion that it is not within the power of the Railroad and Warehouse Commission to compel the retention of the telegraph office at the village of Etna, under the facts noted above. As noted from the above statement of facts, no complaint is made against the railroad company on account of the maintenance of the depot for the receipt and discharge of passengers and for furnishing and running cars for the transportation of freight. The sole complaint relates to the maintenance of the telegraph office. It is not one of the duties enjoined upon a railroad company to maintain a telegraph office for the use of the patrons of the road. Hence, the Railroad and Warehouse Commission would have no jurisdiction or authority to enter an order commanding the railroad company to maintain such office.

Very respectfully,

W. H. STEAD,
Attorney General.

July 17, 1906.

Honorable William Kilpatrick, Secretary Railroad and Warehouse Commission, Springfield, Illinois:

DEAR SIR—I beg to acknowledge the receipt of your letter of July 7, in which you submit the following statement of facts:

There are thirty-three separate and distinct lines of railroad composing what is called the New York Central lines. The C., C., C. & St. L. Ry. Co. and the C., I. & So. Ry. Co. are two of these lines. These two companies maintain a junction at Kankakee for the interchange of cars, and it seems that they interchange cars that are either not equipped in conformity to the requirements of the Safety Appliance Act of this State entitled, "An Act to promote the safety of employés and travelers upon railroads, by com-

pelling common carriers engaged in moving traffic by railroad between points in the State of Illinois to equip their cars with automatic couplers and continuous air brakes, and their locomotives with driving wheel brakes, and for other purposes," approved May 12, 1905, in force July 1, 1905; or, if such cars are so equipped, their equipment has become defective.

You inquire whether the said Act of 1905 is applicable to this state of facts.

In reply thereto, will say I assume that the cars mentioned are not impressed with the character of interstate commerce, and that you desire an opinion relative to them as cars used in carrying the traffic from one point in this State to another point therein.

If the corporate existence of the C., C., C. & St. L. Ry. Co. and the C., I. & So. Ry. Co. is extinguished and swallowed up in the consolidate corporation owning the New York Central lines, then even though the haul on the C., C., C. & St. L. Ry. Co. and the haul on the C., I. & So. Ry. Co., be treated as one continuous haul, such consolidated corporation would be liable, if it used cars prohibited by the said Act of 1905. If the corporate existence of these two companies be not extinguished and each maintains a separate corporate existence, then, even though they be owned by the same persons or syndicate which owns the New York Central lines, each of these two companies would be liable if it used cars prohibited by said Act.

I am, therefore, of the opinion that the Act of 1905 is applicable to the exchange by these two railroad companies of defective cars at their junction in Kankakee.

Of course, this Act has no application to defective cars that are in transit to the repair shop.

Very respectfully,

W. H. STEAD,
Attorney General.

July 28, 1906.

Honorable William Kilpatrick, Secretary Railroad and Warehouse Commission, Springfield, Illinois:

DEAR SIR—On July 17 I gave you an opinion relative to the Safety Appliance Act of 1905. On July 21 you, in company with Mr. Wright, called at this office to make objections to some portions of that opinion.

I have reconsidered the grounds of this opinion and see no reason why any change should be made in any material particular thereof. Inasmuch, however, as the last paragraph of said opinion might be subject to misconstruction, I have rewritten it. The opinion, therefore, as modified is as follows:

I beg to acknowledge the receipt of your letter of July 7, in which you submit the following statements of facts:

There are thirty-three separate and distinct lines of railroad comprising what is called the New York Central lines. The C., C., C. & St. L. Ry. Co. and the C., I. & So. Ry. Co. are two of these lines. These two companies maintain a junction at Kankakee for the interchange of cars, and it seems that the interchange cars that are either not equipped in conformity to the requirements of the Safety Appliance Act of this State entitled, "An Act to promote the safety of employés and travelers upon railroads, by compelling common carriers engaged in moving traffic by railroad between points in the State of Illinois to equip their cars with automatic couplers and continuous air brakes, and their locomotives with driving wheel brakes, and for other purposes," approved May 12, 1905, in force July 1, 1905; or, if such cars are so equipped, their equipment has become defective.

You inquire whether the said Act of 1905 is applicable to this state of facts.

In reply thereto, will say that I assume that the cars mentioned are not impressed with the character of interstate commerce, and that you desire an opinion relative to them as cars used in carrying the traffic from one point in this State to another point therein.

If the corporate existence of the C., C., C. & St. L. Ry. Co. and of the C., I. & So. Ry. Co. is extinguished and swallowed up in the consolidated corporation owning the New York Central lines, then, even though the haul on the C., C., C. & St. L. Ry. Co. and the haul on the C., I. & So. Ry. Co. be treated as one continuous haul, such consolidated corporation would be liable, if it used cars prohibited by the said Act of 1905. If the corporate existence of these two companies be not extinguished and each maintains a separate corporate existence, then, even though they be owned by the name persons or syndicate which owns the New York Central lines, each of these two companies would be liable, if it used cars prohibited by said Act.

I am, therefore, of the opinion that the Act of 1905 is applicable to the exchange of these two railroad companies of defective cars at their junction at Kankakee.

While the Act does not permit a railroad company to receive defective cars from a connecting line, except its own cars (and it could only receive its own cars for the purpose of taking them to the repair shop,) yet a railroad company would have the right to haul on its line cars that have become deffective thereon to the nearest repair shop on such line, to be repaired. (Taylor vs. Boston & M. R. R., 74 N. E. Rep. (Mass.), 591.)

Very respectfully,

W. H. STEAD,
Attorney General.

Sept. 22, 1906.

Honorable William Kilpatrick, Secretary Railroad and Warehouse Commission, Springfield, Illinois:

DEAR SIR—I am in receipt of your favor of the 10th inst. enclosing a letter from Honorable J. F. Gillham, State's attorney of Madison county, and submitting the question as to whether the Railroad and Warehouse Commission has any jurisdiction in relation to the fixing of rates for the carriage of freight by express companies of the State of Illinois.

In reply, I beg to call your attention to sections 8 and 11 of the Act entitled, "Extortion and Unjust Discrimination," Hurd's Revised Statutes, 1905, page 1588. Said section 8 provides as follows:

"The Railroad and Warehouse Commissioners are hereby directed to make for each of the railroad corporations doing business in this State, as soon as practicable, a schedule of reasonable maximum rates of charges for the transportation of passengers and freights, and cars of each of said railroads. * * * * * * * * * *"

It will be observed that said section 8, as well as all of the other sections of said Act, mention railroad companies simply and do not refer in terms to express companies, but said section 11 defines what is meant by the term railroad corporation, and contains the following provisions:

"And the provisions of this Act shall appply to all persons, firms and companies, and to all associations of persons, whether incorporated or otherwise, that shall do business as common carriers upon any of the lines of railways in this State (street railways excepted), the same as to railroad corporations hereinbefore mentioned."

As express companies are common carriers, I am of the poinion that the portion of section 11 above quoted clearly brings express companies within the terms of the Act, and that the Railroad and Warehouse Commission has the power to fix reasonable maximum rates for the carriage of freight by express companies in the State of Illinois.

I return herewith the letter of Mr. Gillham, as requested.

Yours repectfully,

W. H. STEAD,
Attorney General.

STATE OF ILLINOIS, OFFICE OF ATTORNEY GENERAL.
SPRINGFIELD, Sept. 26, 1906.

Honorable William Kilpatrick, Secretary Railroad and Warehouse Commission, Springfield, Illinois:

DEAR SIR—I have your favor of Sept. 19, in which you inquire "whether a railroad company has the right to take up and abandon the switch connection to an industry on their line after having been maintained for many years; and if so, whether this commission has any jurisdiction in a case of the kind as stated in the enclosed corrrespondence."

The correspondence enclosed with your letter discloses that for several years the Wabash Railroad Company has maintained a switch or side track at Decatur. After said switch or side track was constructed the Central Malleable Iron Company located its plant on said track or switch, under some agreement with the railroad company. The railroad company now has constructed or intends to construct its shops at Decatur, by reason whereof the railroad company deems it necessary to take up and abandon said switch or side track. The Central Malleable Iron Company receives all its materials and supplies by means of this switch or side track, and if it be removed this industry will be practically ruined. There are two other industries on this switch or side track that are similarly situated.

The Railroad and Warehouse Commission has only such powers as are expressly conferred upon it by statute and those necessarily inferred from powers expressly granted. I am not able to discover any provision of the statutes which confers upon the Railroad and Warehouse Commission jurisdiction over this matter. It is not a subject which touches the relation of the railroad to the public or which pertains to the accommodations and security of a person doing business with the public. It involves merely the right of a private enterprise to have the railroad company continue a switch or side track which is convenient or necessary to the operation of the business of said private enterprise.

I am, therefore, of the opinion that the Railroad and Warehouse Commission has no jurisdiction over this matter.

The right of the Central Malleable Iron Company to compel the Wabash Railroad Company to continue this switch or side track is a proposition upon which I express no opinion. Very respectfully,

W. H. STEAD,
Attorney General.

STATE OF ILLINOIS, OFFICE OF ATTORNEY GENERAL.
SPRINGFIELD, Nov. 16, 1906.

Honorable William Kilpatrick, Secretary Railroad and Warehouse Commission, Springfield, Illinois:

DEAR SIR—On Oct. 13 you addressed to this department a communication enclosing a letter from Mr. J. C. Lincoln, of the St. Louis Traffic Bureau of the Merchants' Exchange, inquiring as to the jurisdiction of the Railroad and Warehouse Commission of this State over demurrage charges by railroads, and also requesting to be informed if there is any law in Illinois regulating demurrage charges or any Illinois court decision along these lines. On Oct. 18 you addressed another communication to this department, enclosing letter from Mr. George A. Hotchkiss, secretary, Illinois Lumber Dealers' Association of Chicago, submitting practically the same question as that submitted by Mr. Lincoln. The question submitted in these two letters may be considered together.

In reply, I beg to call your attention to two opinions rendered to your board by my predecessor on July 1, 1902, which may be found in the Report and Opinions of the Attorney General for 1901-1902, on pages 346-7 and 8, and which fully answer these questions. In one of said opinions it was held that:

"The Railroad and Warehouse Commissioners of Illinois are not authorized to make rules an regulations governing demurrage charges by a rail-

road company, whether such charges are made by virtue of a special contract or as a claim for damages for detaining the cars an unreasonable length of time before unloading therefrom."

And in the other opinion it was held that:

"While property is *in transitu* and for a reasonable time after it arrives at its destination, so long as the liability of the railroad company as a common carrier continues, the Railroad and Warehouse Commissioners have full authority, under the provisions of the statute. But after the termination of the common law liability of the carrier, and when such property becomes goods held in storage by the railroad company as a warehouseman, then the Railroad and Warehouse Commissioners have authority and jurisdiction so far as supervision is concerned, but they have nothing to do with the regulation of storage rates."

I fully agree with these opinions of my predecessor, so far as they hold that the Board of Railroad and Warehouse Commissioners is without jurisdiction of power to regulate demurrage or storage charges by railroads.

With reference to the other question submitted by Mr. Lincoln, as to whether there is any law in Illinois regulating demurrage charges or any court decisions along such lines, my predecessor stated in one of said opionions, in the report referred to, page 347:

"But it has been held by the courts of Illinois that a railroad company cannot create, in its own favor, a demurrage charge on freight not removed from a car within a certain time, by simply publishing to the public its intention of so doing, and there is no lien upon freight for any supposed demurrage charge in the State of Illinois."

Citing:

C., C., C. & St. L. R. R. Co. vs. *Holden*, 73 App., 583;
C., C., C. & St. L. R. R. Co. vs. *Lamm*, 73 App., 593.

These cases sustain the proposition held in said opinion, and the Supreme Court, in the case of Chicago & Northwestern Railway Company vs. Robert E. Jenkins, 103 Ill., page 588, practically decided to the same effect, holding that all liens are created by law or by contract of the parties, and when the law gives none, neither party can create one without the consent or agreement of the other; that the law will never indulge in the presumption of assent to rules of a railway company for a lien for damages caused by delay in receiving goods shipped, from the publication of the same, and that the right to demurrage does not attach to carriers by railroads; that if it exists at all as a legal right, it is confined to the maritime law and only exists as to carriers by sea-going vessels, and even then it is believed to exist alone by contract.

Our Supreme Court, however, in the case of Schumacher vs. Chicago and Northwestern Railway Company, 207 Ill., 199, in 1904 in an opinion by Mr. Justice Ricks, considered at length the right of railroad companies in this State to make demurrage or storage charges on *carload* freight, after allowing a consignee a reasonable time to unload the same. The Court in this case sustained the right of the railroad company to make a demurrage or car service charge on *carload* freight, after allowing the consignee a reasonable time to unload the same, and held that the railroad company is entitled to a lien upon the freight for such charges; that the existence of a lien upon *carload* freight for car service charges need not arise from a specific contract providing for the same, but that it may arise by implication from the relation which the company sustains as a warehouseman after its duty as a carrier ceases. The Court further held in this case that in determining what is a reasonable time in which a consignee must unload *carload* freight before he can be charged a car service fee, the distance which the freight must be hauled by the consignee is not an element for consideration.

There is no statute in Illinois on the subject of demurrage or storage charges by railroad companies. In the Schumacher case, the case of Chicago & Northwestern Railway Company vs. Jenkins, 103 Ill., 588, is distinguished.

This question as to the law of Illinois on the subject of demurrage and storage charges has nothing to do with the question of the jurisdiction of the Railroad and Warehouse Commission over the subject, but is discussed here in answer to Mr. Lincoln's question above referred to.

Very respectfully,

W. H. STEAD,
Attorney General.

STATE OF ILLINOIS, OFFICE OF ATTORNEY GENERAL.
SPRINGFIELD, Nov. 17, 1906.

Honorable William Kilpatrick, Secretary Railroad and Warehouse Commission, Springfield, Illinois:

DEAR SIR—On the 17th of October you addressed a letter to this department, enclosing a copy of the revised rules of the Illinois Central Railroad Company governing the distribution of cars at coal mines. You enclosed also a letter addressed to the commission from the Wenona Coal Company, complaining that certain of said rules operate to work a discrimination against coal companies in the matter of furnishing and distribution of cars for the transportation of coal from the mines.

You request my opinion, "Whether the conditions as set forth in Mr. Monser's letter is a discrimination which ought to be adjusted by this commission."

Commissioners of this character are creatures of the statutes, and possess no powers except what the statutes expressly confer upon them, and in every case their authority must affirmatively appear from the statutes under which they assume to act. There is not a statute in Illinois which confers upon the Railroad and Warehouse Commission the power to supervise or control the furnishing or distribution of cars.

Section 22 of an Act entitled, "An Act in relation to fencing and operating railroads," approved March 31, 1874, in force July 1, 1874, Hurd's Revised Statutes, 1905, page 1,577 (1,581), provides:

"Every railroad corporation in the State shall furnish, start and run cars for the transportation of such passengers and property as shall within a reasonable time previous thereto be ready or be offered for transportation at the several stations on its railroads, and at the junction of other railroads, and at such stopping places as may be established for receiving and discharging way-passengers and freight. * * * * * * * * * *"

Section 85 of said Act provides a penalty for a violation of the provisions thereof, and provides that the railroad company shall pay the party aggrieved treble the amount of damages sustained by reason of the violation.

The Supreme Court, in the case of the People vs. Railroad and Coal Company, 122 Ill., page 506 (pages 509-510), construing said sections 84 and 85, hold that said section 84 requires a railroad company to furnish the operators of a coal mine sufficient cars to transport its coal on notice given and after the coal has been mined, but that the provisions of this section cannot be extended as to include coal in the earth to be dug and raised from the mines after cars are furnished, so that the carrier for any neglect in that regard would be subject to the penalty of treble damages, provided by said section 85. See also Illinois & St. Louis Railroad & Coal Company vs. People, 19 Ill. App., page 141.

It will be seen from the provisions of the section of the statutes above quoted and referred to and the decisions of the Supreme and Appellate Courts construing them that a coal company would not be without remedy for abuses of the nature complained of by the Wenona Coal Company.

There is nothing, however, in the Act above referred to nor in any other statute which gives the Railroad and Warehouse Commission jurisdiction on this subject. I am of the opinion, therefore, that the Railroad and Ware-

house Commission is not vested with supervision or control of the furnishing and distribution of cars to coal mines, and has no power to correct or adjust the abuses complained of by the Wenona Coal Company.

Very respectfully,

W. H. STEAD,
Attorney General.

APPELLATE COURT DECISIONS

IN CASE OF

Illinois Central R. R. Co. vs. St. Louis & Northeastern Ry. Co.,

IN THE MATTER OF

Crossing in the City of Litchfield, Illinois.

General No. 29. November Term, 1905. Agenda No. 7.

Illinois Central Railroad Company, Appellant,

vs.

St. Louis & Northeastern Railroad Company, Appellee.

Appeal from the City Court of the City of Litchfield.

This is an appeal from an interlocutory order granting an injunction against appellant. On October 16, 1905, appellee filed its bill in chancery against appellant and the city court thereupon ordered a temporary writ of injunction to issue without notice, which was issued and served upon appellant on the same day. On October 28, 1905, the defendant filed with the clerk of the court an appeal bond which was approved by the clerk, in accordance with the statute providing "for appeals from interlocutory orders granting injunctions or appointing receivers."

The material averments of the bill are as follows: That complainant is a railroad corporation organized under the laws of Illinois and has located and is constructing its line of railway and is grading and laying the rails thereof between Staunton and Hillsboro, passing through the city of Litchfield; that in so constructing its railroad, complainant is compelled to cross divers steam railroad tracks and rights of way already constructed or acquired by other railroad corporations between Staunton and Hillsboro, and that divers of said railroad corporations, particularly the C., B. & Q. Railway Company and the C., C., C. & St. L. Railway Company and the defendant, are unfriendly and hostile to complainant and are obstructing and endeavoring to obstruct complainant in the completion of its railroad by refusing to permit complainant to cross their tracks and by inciting other property owners to obstruct it; that the proposed railroad of complainant will be operated by electricity and is what is commonly called an "electric railroad;" that in its operation within cities and villages it performs the service of and is practically a street railway; that by reason thereof, property owners and business men of cities and villages through which it passes encourage and generally desire its construction through the business portions thereof and as much in the streets as possible; that, by reason of its motive power and method of operation, much greater facilities will be afforded its patrons in passenger and freight service than is furnished by steam roads and that steam roads, generally harass and incite opposition to complainant to its inconvenience and injury; that in order to meet with the requirements of the city of Litchfield and its citizens and business men complainant located its line so as to pass over private property to within a quarter of a mile of the intersection of Sargent and Clinton streets, in the city of Litchfield, and thence over certain streets and alleys to the intersection of Sargent and Clinton streets, thence eastwardly about three blocks to State street, the latter being the principal business street of said city, and thence north on State street to the north end thereof and around the city park and eastwardly on Water street out of said city; that upon petition of property owners owning a majority of the frontage on said streets and of each mile thereof, the city council of said city passed an ordinance granting to the St. Louis & Springfield Railway Company, the assignor of complainant, the right to construct and operate its railway on

Sargent street from an alley next west of Clinton street eastwardly to State street and north thereon for a distance of four blocks and requiring said railway to be laid upon the established grade of said streets; that complainant made the necessary surveys, measures and levels for constructing its railroad in said streets and acquired its right of way over private property where required to connect with the points covered by said ordinance and has graded and constructed its railroad thereon and in the streets and alleys of said city to within about three hundred feet of the intersection of Sargent and Clinton streets, and has installed its permanent crossings over the tracks of the C., B. & Q. Railway Company and the defendant in Sargent street; that the city of Litchfield is the owner in fee of Sargent street and has heretofore permitted to be constructed across the same three certain railroad tracks now operated as steam railroads and possessed and controlled respectively by the Wabash Railroad Company, the C., B. & Q. Ry. Co. and the defendant company, and that said city also permitted certain other railroad tracks to be constructed across State street, which last mentioned tracks are possessed and operated by the C., C., C. & St. L. Ry. Co.; that each of said railroad tracks is constructed upon the grade of the street and are all practically on the same grade or level; that the tracks of the Wabash Railroad Company, the C., B. & Q. Railway Company and the defendant are at right angles to and across the tracks of the C., C., C. & St. L. Railway Company, about 350 feet north of Sargent street; that in order to use and occupy Sargent street, under the terms of said ordinance, complainant will be compelled to cross the tracks of the Wabash Railroad Company, the C., B. & Q. Railway Company and the defendant in Sargent street, and of the C., C., C. & St. L. Railway Company in State street; that the necessity therefor has been publicly known to the authorities of said city, county and State and of said four railroads for months; that since the passing of said ordinance complainant has been openly and publicly securing its right of way and grading and constructing its railroad, and complainant had well hoped that the other railroad corporations would so unite with complainant that no objection would be made to complainant crossing their respective tracks in such manner as to enable complainant to construct and operate its railroad and comply with the wishes of the city of Litchfield and of its citizens and property owners; that complainant has applied to each of said corporations to permit it to construct and place at its sole expense such necessary crossings and appliances as would provide grade crossings over each of said railroad tracks and has offered to install the same at its sole expense and without any interference with the operation of the trains of said corporation; that it is entirely practical and safe to construct its railroad in Sargent and State streets across said track and so as not to interfere with the operation of trains on the latter or to increase the hazard of travel over the same, and that the railroad of complainant will be operated by means of single cars; or, at the most, by trains but of a small number of cars, all capable of much quicker and easier control than steam cars, so that such operation will scarcely add more to the danger of operation of the other railroad tracks than the travel of an equal number of wagons upon said streets; that the Wabash Railroad Company has consented and agreed to the construction by complainant of such grade crossing with a connection by means of a "Y" track between the tracks of the Wabash Railroad and complainant, so as to furnish cars to be transferred from one track to another, and has entered into a contract to that effect; that each of the other railroad corporations, and particularly the defendant, has refused so to do, and threatened to forcibly resist the placing or maintenance and operation of any crossing by complainant over the tracks controlled by it and to remove any and all material now placed or which may hereafter be placed by complainant in any part of Sargent street which is occupied with the tracks of the defendant; that the defendant, the C., B. & Q. Railroad Company and the C., C., C. & St. L. Railway Company, has each applied to the Board of Railroad and Warehouse Commissioners of the State of Illinois to act under the terms of the statutes in such case made and provided, and to compel complainant to cross said tracks at some other points and upon other

grades than those required by said ordinance and to order that complainant shall go over or under said tracks; that the Wabash Railroad tracks are between those of the defendant and of the C., B. & Q. Railway and about one hundred and seventy-five feet from the same, respectively; that it is physically impossible to cross the tracks of the Wabash Railroad in Sargent street at grade and make such "Y" connection as complainant has contracted with the Wabash Railroad Company to do, and to cross the tracks of the defendant and the C., B. & Q. Railway Company in Sargent street other than at grade; that as complainant has exercised its power to locate its railroad under its articles of incorporation, it is advised that its right is exhausted and it cannot relocate the same upon another line so as to cross said tracks at other points than those specified in said ordinance; that the defendant is acting in concert with such other corporations in opposing complainant in the exercise of its rights as a common carrier and under the terms of said ordinance and in forcibly resisting the employés of said complainant in the construction of its railroad and in threatening to remove the material, crossings and tracks now placed by complainant in Sargent street or which may hereafter be placed therein, and in applying to the Board of Railroad and Warehouse Commissioners of the State of Illinois to compel complainant to abandon its rights under said ordinance and its right of way so acquired and to cross over or under the tracks of said company outside the city of Litchfield and at a point where it has no right of way, and where its right to acquire the same is doubtful in law; that its conduct is unreasonable and in fraud of the rights of complainant and is pursuant to a conspiracy between it and other corporations to prevent complainant from entering the business portion of the city of Litchfield as a competitor in business, and to enable them to maintain their present monopoly of the business of common carriers; that such conduct deprives complainant of its property without due process of law, and will constitute a permanent and irreparable injury to complainant; that complainant expressly denies that the Board of Railroad and Warehouse Commissioners have any right or authority to interfere with complainant in the construction of its road in Sargent street under said ordinance.

The prayer of the bill is that a temporary injunction issue against the Illinois Central Railroad Company, its agents, etc., enjoining them and each of them from forcibly or otherwise removing from or in any manner obstructing complainant or its agents in completing, placing or using any crossing, rails, ties; fish plates, bolts, nuts, poles, wires or other appliances in Sargent street as a part of any crossing of the railroad of complainant over any railroad track of the defendant in said street, and also from further prosecuting or making before the Board of Railroad and Warehouse Commissioners of the State of Illinois any objections to the crossing by complainant of the tracks of the defendant in Sargent street in the manner prescribed by said ordinance; and upon a hearing that said temporary injunction may be made perpetual.

Attached to and made a part of said bill of complaint is a copy of the ordinance referred to therein, which grants to the St. Louis and Springfield Railway Company and its assigns, the right to construct, maintain and operate for fifty years a railroad along certain public streets, including Sargent street, from State street to Clinton street, which is to be operated by electricity or any other motive power permitted by the city except steam, and is to be used for the transportation of passengers, baggage, U. S. mail, express matter and freight. It provides that the tracks shall be composed of "T" rails and shall be laid on the grade now established or hereafter established. It also provides that "no right or privilege hereby conferred shall be deemed or considered so as to conflict or interfere with any rights or privileges now held, possessed or enjoyed by any person, company or corporation under any privileges or franchises heretofore granted by said city, to which rights all the rights hereby conferred shall be subject." It also provides that "it is expressly stipulated, however, that the work of constructing said track and appliances therewith connected shall not be commenced

until the said railway company, its successors or assigns shall have completed and ready for operation a continuous line of interurban railway from Hillsboro or Staunton to the limits of said city of Litchfield at some point where same connects with the right of way, as mentioned in section one of this ordinance."

Puterbaugh, P. J.:

The principal and controlling question presented by this record for determination is as to the proper construction and effect of section 209 of chapter 114 of the statute entitled, "An Act in relation to the crossing of one railroad by another and to prevent danger to life and property from grades crossings," which reads as follows:

"That hereafter any railroad company desiring to cross with its tracks the main line of another railroad company, shall construct the crossing at such place and in such manner as will not unnecessarily impede or endanger the travel or transportation upon the railway so crossed. If in any case objection be made to the place or mode of crossing proposed by the company desiring the same, either party may apply to the Board of Railroad and Warehouse Commissioners, and it shall be their duty to view the ground and give all parties interested an opportunity to be heard. After full investigation, and with due regard to safety of life and property, said board shall give a decision prescribing the place where and the manner in which said crossing shall be made, but in all cases the compensation to be paid for property actually required for the crossing, and all damages resulting therefrom, shall be determined in the manner provided by law in case the parties fail to agree." (Rev. Stat. 1903, page 1479.)

It is insisted by appellant that under said Act, where objection to such crossing is made, a railroad company organized under the General Railroad Act of this State has no right to cross with its railroad track the main track of another railroad at a particular point selected by the company desiring to cross, unless the Railroad and Warehouse Commission approves the place and manner of the proposed crossing. Appellee, on the contrary, contends that the jurisdiction of the Railroad and Warehouse Commission can only be invoked where the proposed crossing is made in violation of the provisions of such Act; that inasmuch as the record shows that the crossing in controversy is constructed "at such place and in such manner as will not necessarily impede or endanger the travel and transportation upon the railway so crossed," the intervention of the Warehouse Commission cannot be invoked. We do not so construe the Act in question. Appellee having been organized as a railroad corporation, under chapter 114 of the statutes, is subject to all the provisions of the same, and is burdened with the same obligations, restrictions and limitations as other railroad corporations organized under such Act, without regard to what motive power is or may be employed in the operation of its trains. (*Goddard* vs. *Ry. Co.*, 104 Ill. App., 526; *Malott* vs. *Ry. Co.*, 108 Fed. Rep., 313.)

The clear purpose of the Act, when its title, language, the existing circumstances and contemporaneous conditions, the evil sought to be remedied, its necessity and the general objects sought to be attained are considered, is to require that crossings of this character shall be made at such places and in such manner as will not unnecessarily impede or endanger travel or transportation upon the railroad crossed, and that when the question whether or not a crossing is made or proposed to be made, complies with the statute in this regard is raised by objection, such question is relegated to the Railroad and Warehouse Commission for its final decision and is not one of fact to be determined by the courts.

We are inclined to construe the statute as meaning and intending, not that the commission shall indicate a particular place and no other at which the crossing shall be made, but that they shall have discretionery power only to prevent its being made at any place or in such manner as will unnecessarily impede or endanger travel on the existing line; that while, where objection is made, the commission may determine whether or not a particular crossing desired will be or is dangerous, in case of an adverse decision, the company seeking to cross still has the right to select another

place or manner of crossing which, in case of the consent of the municipality and further objection, must in turn be approved by the commission. In other words, the power conferred upon the commission is in its nature that of veto merely. If this construction be reasonable and warranted, the exclusive power of the municipality over the streets within its corporate limits is not interfered with by the Act. Its power to control the location of a railroad and to protect property and persons against injury still remains, no positive power being conferred upon the commission to permit a crossing to be made contrary to the will of the municipal authorities. Nor is the constitutional requirement that the consent of the local authorities of a municipality must first be obtained before the General Assembly shall grant the right to construct a street railroad therein to any extent thereby impinged upon. True it is that the commission may, in their discretion, prevent any crossing whatever to be made within the limits of a municipality, and if such interdictive authority can be said to abridge the exclusive jurisdiction of a city over its streets conferred by the "Cities, Villages and Towns" Act, section 209 must be held, we think, to impliedly repeal or modify such part of such former Act as is inconsistent therewith or repugnant thereto. Furthermore, we think that such section may be upheld as an exercise of the inherent power of the State to enact all police laws necessary and proper to secure and protect the life and property of the general public, including not only those who may be resident of a particular municipality, but all who travel upon or entrust their property to the custody of railroads. To this extent the local police power of municipalities is clearly subordinate to that of the State.

In *Malott* vs. *Ry. Co.*, 108 Fed. Rep., 313, appellee, an electric railroad company, organized under the General Railroad Act, sought to cross their track with that of a railroad of which appellant was receiver. It is there held that section 209, *supra*, must be construed as in *pari materia* with sections 18 and 20 of the Act of March 1, 1872, which provides generally for the exercise of power of eminent domain by railroads, and as making a valid provision for the modification of procedure under such prior statute, so far as relates to the place and manner of constructing railroad crossings, in the interest of greater safety.

It is insisted that if the foregoing construction be adopted, it will hereafter be practically impossible for electric railways to secure an entrance to any of our cities and villages; that such railway can not acquire the right to use any street of a city or village, for the reason that interested steam railroad companies can easily purchase the refusal of permits from property owners along a street and thereby prevent the use of the street by an electric railway; and that, if before any street can be used, the commissioners must locate the point of crossing for each railway to be crossed, and the electric railway must acquire the frontage signatures, it will mean that the existing monopolies will be preserved, and the public cannot have the transportation facilities demanded by it. In answer to such suggestion it may be said that if the hypothesis suggested be reasonable, and the powers granted the Railroad and Warehouse Commission are too vast and may be exercised in arbitrary manner, relief should and must be sought from the General Assembly, and not in the courts.

After the present appeal was perfected, appellee filed a motion in this Court to dismiss the same for the reason that, as alleged, appellant, after the entry of the order appealed from, interposed and urged in the Circuit Court a motion to dissolve the injunction. Said motion must be overruled. Facts tending to show a release of errors cannot be considered on a motion to dismiss in the absence of a plea of release errors. (*Ry. Co.* vs. *Siegel*, 161 Ill., 638; *Crosby* vs. *Kiest*, 135 Ill., 458; *Trustees* vs. *Hihler*, 85 Ill., 409.)

The foregoing views render a determination of the other questions raised and argued by appellant unnecessary. The interlocutory order granting the injunction will be reversed and the cause remanded to the city court, with directions to dismiss the present bill for want of equity.

Decree reversed and remanded with directions.

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

Louisville & Nashville R. R. Co.
vs.
St. Louis & Northeastern Ry. Co.

Petition Objecting to Grade Crossing at Fifteenth Street, East St. Louis.

Petition filed Jan. 20, 1906.
Jan. 8, 1907, case dismissed on request of petitioner.
See page 23, report of 1906.

Illinois Central R. R. Co.
vs.
Chicago, Bloomington & Decatur Ry. Co.

Petition Objecting to Grade Crossing at Clinton, Ill.

Petition filed Feb. 3, 1906.
Settled by agreement and case dismissed.
See page 24, report of 1906.

Illinois Central R. R. Co.
vs.
Aurora, Elgin & Chicago Ry. Co.

Petition Objecting to Grade Crossing at Hillside, Ill.

Petition filed Feb. 9, 1906.
Aug. 28, 1906, case dismissed on request of petitioner.
See page 24, report of 1906.

Chicago & Alton Ry. Co.
vs.
Danville & Edwardsville Terminal Ry. Co.

Petition Objecting to Crossing at Venice, Ill.

Petition filed May 21, 1906.
March 5, 1907, case dismissed on motion of petitioner.
See page 31, report of 1906.

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

In re Petition of Illinois Grain Dealers' Association.

At the August term, 1905, of the city court of East St. Louis an order and decree was entered in a certain cause then pending in said court wherein the People of the State of Illinois *ex rel.* The Railroad and Ware-

house Commissioners were complainants and Jacob Koerner *et al.* were defendants, which among other things provided as follows:

"The tare to be allowed in each case is by agreement to be fifty (50) pounds per car for each car containing forty thousand (40,000) pounds or under and one hundred (100) pounds per car for each car containing over forty thousand (40,000) pounds."

In compliance with this order and decree, this commission, on the 9th day of August, 1905, entered the following order:

"ORDER OF THE RAILROAD AND WAREHOUSE COMMISSION APPROVING AGREEMENT BETWEEN RECEIVERS OF GRAIN AND OPERATORS OF ELEVATORS OF EAST ST. LOUIS AND VENICE, ILLINOIS, WITH REFERENCE TO ALLOWANCE OF TARE.

"*Whereas*, There has been a difference between the receivers of grain and operators of elvators at East St. Louis and Venice, Illinois, with reference to an allowance of tare to the operators of elevators; and,

"*Whereas*, Said receivers of grain and operators of elevators have settled their differences by mutual agrement whereby tare of fifty pounds is to be allowed on each car of grain weighing forty thousand (40,000) pounds and under, and one hundred (100) pounds on each car weighing over forty thousand (40,000) pounds; and,

"*Whereas*, This commission has investigated the question of allowance of tare and finds that the agreement entered into between said receivers of grain and operators of elevators is reasonable and just;

"*It is therefore ordered by this commission*, that said agreement between receivers of grain and operators of elevators at East St. Louis and Venice, Illinois, be and the same is hereby approved. The official weighers of grain at East St. Louis and Venice, Illinois, are hereby instructed to make said allowance and they are authorized to stamp on certificates issued by them the following:

" 'The deduction for tare shown by this certificate is by agreement between elevators and grain receivers, approved by the Railroad and Warehouse Commission of Illinois.' "

After the promulgation of the above order of the commission, the official weighers of grain at East St. Louis and Venice, Illinois, deducted from the actual weight of each car of grain received the "tare" authorized by the order.

Notice of the application of the representatives of the complainant for a cancellation of this order having been given to all parties interested, the matter was set down for hearing at the office of the commission at Springfield, Illinois, on March 5, 1907, at which time and place a full hearing was accorded the parties in interest.

In addition to the evidence offered and the arguments presented the following communication from the board of directors of the Merchants' Exchange of St. Louis, Mo., was received:

"ST. LOUIS, March 2, 1907.

"*To the Honorable the Board of Railroad and Warehouse Commissioners of the State of Illinois, Springfield, Ill.:*

"GENTLEMEN—The board of directors of the Merchants' Exchange of St. Louis respectfully petition your honorable body to rescind the order permitting the deduction of the so-called 'tare' on grain unloaded at elevators at East St. Louis and adjacent points under the jurisdiction of the Railroad and Warehouse Commissioners of Illinois.

"Trusting that you will see the reasonableness of this request, we remain

"Yours very truly,

"THE BOARD OF DIRECTORS OF THE MERCHANTS' EXCHANGE,

"By GEO. H. PLANT, *President.*

"GEO. H. MORGAN, *Secretary.*"

After a full consideration of the facts, we have arrived at the conclusion that no reason now exists for making an arbitrary deduction from the actual weight of all grain weighed at East St. Louis and Venice. On the other hand, when an unusual amount of dirt or foreign matter is found

inseparably mixed with the grain, reasonable deductions should be made on account thereof.

It is therefore ordered, That the order of this commission, entered on the 9th day of August, 1905, and hereinbefore set forth be and the same is hereby set aside, cancelled and annulled. And it is further ordered, that no dockage from actual weights shall be allowed on incoming or outgoing grain at East St. Louis and Venice, except when unusual dirt or foreign matter is inseparably mixed with the grain, in which case it shall be the duty of the official weighers of grain to determine the amount of unusual dirt or foreign matter and to weigh the entire contents of the car. All allowances for unusual dirt or foreign matter shall appear on the face of the certificate issued for such car or cars.

Dated this 20th day of March, A. D. 1907, at Springfield, Ill.

[Signed] W. H. Boys, *Chairman,*
J. A. Willoughby, *Commissioner.*

Hammond Belt Ry. Co.
vs.
South Chicago & Southern Railroad Co.

Petition to Cross at Grade at Calumet Park.

Petition filed July 27, 1906.
Case still pending.
See page 31, report of 1906.

Chicago & Alton Ry. Co. and
Chicago, Burlington & Quincy Ry. Co.
vs.
The Jacksonville Railway and Light Co. and
The Illinois Western Ry. Co.

Petition Objecting to Crossing at Grade in State Street, Jacksonville, Ill.

Petition filed July 30, 1906.

Chicago & Alton Ry. Co.
vs.
The Jacksonville Railway and Light Co. and
The Illinois Western Ry. Co.

Petition Objecting to Grade Crossing Two and One-half Miles South of Jacksonville.

Petition filed August 10, 1906.
April 3, 1907, case dismissed on motion of petitioner.
See page 32, report of 1906.

South Chicago & Southern R. R. Co.,
vs.
Hammond Belt Ry. Co.

Petition Objecting to Crossing at Grade near Calumet Park.

Petition filed November 3, 1906.
Case still pending.
See page 33, report of 1906.

Chicago & Alton Ry. Co.
vs.
St. Louis & Springfield Ry. Co.

Petition Objecting to Grade Crossing on West Street in Carlinville, Ill.

Petition filed November 28, 1906.
Case still pending.
See page 33, report of 1906.

Illinois Central R. R. Co. and
Baltimore & Ohio Southwestern R. R. Co.
Southern Ry. Co.

Petition filed December 8, 1906.
Case heard and taken under advisement.
See page 33, report of 1906.

Citizens of Granite City, Ill.
vs.
Chicago & Alton R. R. Co.
Cleveland, Cincinnati, Chicago & St. Louis Ry. Co.
Chicago, Peoria & St. Louis Ry. Co. and
The Wabash Railroad Co.

Complaint of Lack of Proper Facilities for Handling L. C. L. Shipments at Granite City, Ill.

Petition filed December 17, 1906.
Railroads agree to furnish the facilities required and case dismissed.
See page 34, report 1906.

Chicago & Southern Traction Co.
vs.
Illinois Central R. R. Co.

Petition to Cross at Grade at 157th Street, Harvey, Ill.

Original order for subway crossing entered Jan. 18, 1906.
See pages 44 and 45 report of 1905.
The following amended order was entered March 7, 1907:

Chicago & Southern Traction Co., Petitioner,

vs.

Illinois Central Railroad Co., Respondent.

Crossing at 157th Street, Harvey.

APPEARANCES:

CHARLES F. DAVIS, Attorney for Petitioner.
JOHN G. DRENNAN, Dist. Attorney for Respondent.

The time having expired for the compliance with the previous order of the commission, to install a subway crossing by the petitioner across the main line of the respondent company, at 157th street, Harvey, and

Now comes the petitioner, the Chicago & Southern Traction Company, by Charles F. Davies, its attorney, and for various reasons shows to the commission that it has been unable to comply with the original order of the commission, and prays that the time may be extended.

The attorney for the respondent not interposing any objection to the extension,

It is therefore ordered by the commission that the Chicago & Southern Traction Company, the petitioner herein, be granted until the first day of November, 1907, to comply with the original order of the commission of date, 1906, and that the commission shall retain jurisdiction herein of the subject matter, and the parties to this proceeding until said subway is fully completed.

[Signed.] W. H. BOYS,
B. A. ECKHART,
J. A. WILLOUGHBY,
Commissioners.

Dated at Springfield, Ill., March 7, 1907.

Michigan Central R. R. Co.,

vs.

Chicago & Southern Traction Co.

Petition Objecting to Grade Crossing at Chicago Heights, Ill.

Petition filed December 8, 1905.
Original order entered March 14, 1906.
See report of 1906, page 25.
Time for compliance with order extended by order of the commission.

Elgin, Joliet & Eastern Ry. Co.,

vs.

Chicago & Southern Traction Co.

Petition Objecting to Grade Crossing at Chicago Heights, Ill.

Petition filed July 2, 1906.
Original order entered September 13, 1906.
See page 30, report of 1906.
Time for compliance with this order extended by order of the commission to Jan. 11, 1908.

Illinois Central R. R. Co.,

vs.

Coal Belt Electric Railway Co.

Petition Objecting to Grade Crossing in the City of Herrin, Ill.

Petition filed Nov. 6, 1906.
Place of crossing viewed by the commission and case heard.
July 22, 1907, the following orders were entered of record:

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

Illinois Central R. R. Co.,

vs.

Coal Belt Electric Ry. Co.

Petition to Prevent Manner and Location of Crossing as Proposed.

APPEARANCES:

MR. JOHN G. DRENNAN, for Petitioner.
HON. W. S. FORMAN, for Respondent.

This is a petition of the Illinois Central R. R. Co. filed November 6, 1906, in which it objects to the manner and location of a proposed crossing of a track of the Coal Belt Electric Railway Company with the tracks of the petitioner in the city of Herrin.

The petitioner, the Illinois Central R. R. Co. avers that it is a railroad corporation duly organized under and by virtue of the laws of the State of Illinois; that it owns and operates a main line of railroad running through the city of Herrin, Williamson county, Illinois, and across a certain street in said city known as Park avenue; that the Coal Belt Electric Railway Company is also a railroad corporation organized under and by virtue of the laws of the State of Illinois; that it has practically constructed its road and that it is attempting to cross at grade with the track of its proposed main line, the tracks of the petitioner, in said Park avenue; that such a crossing would be dangerous to life and property, and that the respondent is attempting to make such a crossing without the permission of this commission. The petitioner objects to the place and manner of crossing as proposed, and prays this commission to take cognizance of the complaint and dispose of the case in the usual manner to the end that it may render a decision in the premises as the merits of the case may require.

A copy of the petition was served on the respondent, the Coal Belt Electric Ry. Co. November 6, 1906. As provided by law the site of the proposed crossing was viewed by the commission on December 19, 1906. Notice was served on December 20, 1906, setting the case for hearing in Springfield on January 15, 1907.

In the answer of the respondent filed January 14, 1907, it admits certain of the things alleged in the petition. The respondent's answer also states that it is authorized by ordinance duly passed by the authorities of the city of Herrin, to use Park avenue in said city of Herrin for street railroad purposes; that the tracks of its road will be laid wholly in the street, which is 100 feet wide; that the grade of the street is level for a considerable distance on each side of the Illinois Central tracks, and that the only feasible way by which a crossing can be effected is at grade.

The case came on for hearing January 15, 1907, upon the oral testimony offered by the respective parties and a stipulation as to certain facts.

By agreement of all parties concerned, it was conceded that a grade crossing at the point proposed was the only practicable way of effecting the crossing. This agreement coincided with the views of the commission, whereupon this commission directed the respondent to prepare and submit to the petitioner for its approval a plan for an interlocking device to be installed and operated at said crossing, and upon the approval of said plan by the petitioner to submit the same to this commission.

On July 9, 1907, the respondent submitted a plan of an interlocking system to be installed at said crossing which has the approval of the petitioner, and the same appearing to be in all respects an adequate protection at said crossing.

It is therefore decided and ordered that the respondent, the Coal Belt Electric Ry. Co. be allowed to cross at grade with its track, as located in the center of Park avenue, in the city of Herrin, Williamson county, Illinois, the tracks of the petitioner, the Illinois Central R. R. Co., and that said crossing shall be effected at the entire expense of the respondent.

It is further decided and ordered that the respondent, the Coal Belt Electric Ry. Co. shall install and maintain at its own expense an interlocking system at said crossing substantially in accordance with plans submitted July 9, 1907, and now on file in this office.

It is further decided and ordered that the cost of operation of said interlocking system shall be divided equally between the parties hereto.

Dated this 22d day of July, 1907.

[Signed.] W. H. Boys,
B. A. Eckhart,
J. A. Willoughby.
Commissioners.

Before the Railroad and Warehouse Commission of Illinois.

Illinois Central Railroad Company,

vs.

Coal Belt Electric Railway Company.

Supplemental Petition.

APPEARANCES:

Mr. John G. Drennan, for Petitioner.
Hon. W. F. Forman, for Respondent.

On the 22d day of July, 1907, an order was entered in the above entitled cause authorizing the respondent to cross at grade with its track as located in the center of Park avenue, in the city of Herrin, Williamson county, Illinois, the tracks of the petitioner, the Illinois Central Railroad Company, and it was required to install and maintain an interlocking system at said crossing substantially in accordance with certain plans which were submitted to the commission on July 9, 1907.

On August 29, 1907, the petitioner filed its supplemental petition in said cause alleging in substance that on August 27, 1907, the respondent filed a bill in the Circuit Court of Williamson county, Illinois, in which it prayed for and, upon the order of the Master in Chancery of said court, obtained an injunction enjoining the petitioner from in any manner preventing said respondent from putting in the said proposed crossing; that said petitioner did on August 27, 1907, with force and arms actually put in at said place mentioned in the former order of this commission, the crossing therein authorized; that no interlocking device has been installed at the said crossing, and that petitioner is informed and believes, and therefore charges the fact to be, that the respondent intends to commence the operation of its trains over said crossing without installing the interlocking plant mentioned in the order of the commission on July 22, 1907.

Upon the filing of this supplemental petition a citation was issued to the respondent requiring it to appear before the commission on September 3, 1907, and answer said supplemental petition.

On September 3, 1907, the parties appeared before the commission at its office in Springfield, Illinois, where the charges in the supplemental petition were admitted by the respondent to be true, but it was contended that the respondent had no intention of operating trains over said crossing until it

had first complied with the former order of this commission. It appeared from the statements made that the respondent was constructing, or about to construct, a depot building on Park avenue near the Illinois Central tracks, and permission was asked to transfer cars over said crossing containing material for said proposed depot by horse power.

It was further contended by the petitioner that it owned a right of way one hundred feet wide over and across Park avenue, and that the respondent had no legal right to cross its tracks without first condemning a right of way. This, of course, presents a question upon which this commission has no power to pass. The former order of the commission authorizing the crossing to be constructed was, of course, upon the condition that the respondent obtained the necessary right of way by agreement or by condemnation proceedings. On the question of whether the petitioner has any rights in Park avenue, which the respondent would be required to acquire, either by purchase or condemnation before constructing this crossing, we do not express any opinion.

It is therefore ordered and decided by the commission that the respondent refrain from operating cars or trains over said crossing until it has complied with the requirements of the former order of this commission entered on July 22, 1907, except that it is authorized for the period of sixty days from this date to transfer cars loaded with material to be used in the construction of respondent's depot, over and across said crossing by animal power.

Dated this third day of September, A. D. 1907.

W. H. Boys, *Chairman.*
J. A. Willoughby, *Commissioner.*
B. A. Eckhart, *Commissioner.*

Sparta Gas and Electric Co.
vs.
Illinois Southern Ry. Co.

Complaint of Excessive Switching Charges at Sparta, Ill.

Petition filed January 3, 1907.
Case heard before the commission and taken under advisement.

Toledo, St. Louis & Western R. R. Co.,
vs.
St. Louis & Illinois Belt Ry. Co.

Petition Objecting to Grade Crossing at Edwardsville, Ill.

Petition filed Jan. 18, 1907.
Place of proposed crossing viewed by commission.
Case dismissed on request of petitioners.

St. Louis & Illinois Belt Ry. Co.,
vs.
Toledo, St. Louis and Western Ry. Co.

Petition to Cross at Grade Near Edwardsville, Ill.

Petition filed Jan. 21, 1907.
Place of proposed crossing viewed by commission.
Case dismissed on request of petitioner.

Cairo & Thebes R. R. Co.

vs.

Eastern Illinois & Missouri R. R. Co. and
Chicago & Eastern Illinois R .R. Co.

Petition to Cross at Grade Near Santa Fé, Ill.

Petition filed Jan. 23, 1907.

Feb. 13, 1907, place of proposed crossing viewed by the commission.

March 1, 1907, petition of Illinois Central R. R. Co. to be made party defendant granted.

March 13, 1907, case heard by commission.

April 22, 1907, order of commission entered of record as follows:

Cairo & Thebes Railroad Company

vs.

Eastern Illinois and Missouri Railroad Co.
Chicago and Eastern Illinois R. R. Co.
and Illinois Central R. R. Co.

Petition to Cross at Grade.

J. M. Hamil and Wm. S. Dewey, for Petitioner.
E. H. Seneff, for C. & E. I. R. R. Co.
John G. Drennan, for I. C. R. R. Co.
Walter Warder, for Cairo Commercial Club.

The material allegations contained in the petition in the case, which was filed in the office of the commission on January 23, 1907, are as follows:

The petitioner, the Cairo and Thebes Railroad Company, is a steam railroad corporation, organized under the laws of the State of Illinois, with power to construct, maintain and operate a railroad from the city of Cairo, in Alexander county, in a northwesterly direction to the village of Thebes, in the same county, a distance of about 24 miles, and that said railroad is now being constructed; that the Eastern Illinois and Missouri Railroad Company is a steam railroad corporation organized under the laws of the State of Illinois and is the owner of a line of railroad extending from the city of Marion, in Williamson county, to the village of Thebes, and that said railroad is now being operated by the Chicago & Eastern Illinois Railroad Company under a lease; that the petitioner desires to cross at grade the main line of the Eastern Illinois and Missouri Railroad Company near the town of Santa Fe, at a point particularly described in the petition, and that such crossing will not unnecessarily impede or endanger the travel or transportation upon the railroad so crossed and will not unnecessarily endanger life or property.

The respondents were duly notified of the filing of this petition and in accordance with the requirements of the statute, the commission viewed the place of the proposed crossing on Feb. 13, 1907. On March 1, 1907, the Illinois Central Railroad Company filed a petition asking to be allowed to intervene in said cause and to be made a party defendant, on the ground that said railroad, by virtue of the provisions of a certain contract entered into with the Chicago and Eastern Illinois Railroad Company on March 27, 1902, obtained certain trackage rights for a period of 999 years over the Eastern Illinois and Missouri Railroad between Olive Branch and Thebes, and consequently over said line at the point of the proposed crossing. The prayer of the petition was granted and the Illinois Central Railroad Company made a party defendant.

Answers were duly filed by the Chicago and Eastern Illinois Railroad Company and the Illinois Central Railroad Company wherein it is insisted that due regard for the safety of life and property requires that the grades be separated at the point of crossing; that it is entirely practicable and that

the petitioner should be required by the order of this commission to cross the respondent's road by means of an overhead crossing.

The case was set down for hearing on March 5, 1907, at the office of the commission in Springfield, at which time all interested parties being represented, a large number of witnesses were examined, both by the petitioner and the respondents. Upon the conclusion of the evidence and by agreement of the parties the oral arguments were postponed until March 13, 1907, and by consent of all the parties interested, Mr. Walter Warder, representing the Cairo Commercial Club, was permitted to argue the case orally.

On March 11, 1907, a communication from Mr. H. I. Miller, president of the Chicago and Eastern Illinois Railroad Company, addressed to the commission, was filed with the secretary. In this communication Mr. Miller, representing the Chicago and Eastern Illinois Railroad Company and the Illinois Central Railroad Company, proposed to lower the grade of their railroad track at the proposed point of crossing three feet, without expense to the petitioner and to waive condemnation proceedings, provided the petitioner constructed or was required to construct an overhead crossing.

It is, as we understand, conceded by all of the parties interested, that the construction of an overhead crossing at the point of intersection is practicable; that is, that such crossing can be constructed, but it is contended by the petitioner, among other things, that the cost of separating the grades at this point would seriously cripple it in the building of the proposed line, if, indeed, it did not cause an abandonment of the enterprise.

The proposed point of crossing is a short distance southeast of the town of Santa Fe, in Alexander county. At this point respondent's road, generally speaking, runs in a northerly and southerly direction and the proposed road of the petitioner will be constructed in an easterly and westerly direction. The road of the petitioner, south of the proposed point of crossing, will be constructed for a considerable distance over low, swampy land, much lower than the land at the point of crossing, and in approaching the crossing from the south, the track of the petitioner will be laid on a grade of three-tenths of one per cent for a considerable distance, in order to reach the present grade of the respondent's road at the crossing.

On the part of the petitioner a number of civil engineers testified that the cost of a grade crossing, at the point in question, would be $65,916.50 and the cost of an overhead crossing would be $563.234.73, the differenec between these two sums, $497,000.00 approximately, being the cost of an overhead crossing over and above the cost of a grade crossing. These figures were based on the assumption that the grade of petitioner's road approaching the summit of the overhead crossing should not exceed three-tenths of one per cent, that being the maximum grade adopted by the company in laying out its line. On the part of the respondents several engineers testified that a grade crossing would cost $126,147.00 and the cost of an overhead crossing would be $239.581.00, the difference being $113.434.00. They also testify that a four or five-tenths grade would be entirely practicable and feasible and would cost considerably less than the amount above mentioned. This wide difference of opinion may be explained in part by the following facts appearing from the evidence: Acording to the grade adopted by the petitioner, its line at a point 4,000 feet south of the proposed crossing would be from twelve to thirteen feet below the grade at the crossing, consequently if it should be required to go over the respondent's line and elevate its tracks at the crossing so as to give the necessary clearance for trains on the respondent's road, the embankment, because of its height, would have to be extended for a considerable distance to the south and would be about three and one-third miles in length, all told. On the other hand, it was contended by the respondents that the land south of the crossing was subject to overflow from the Mississipni river and that if the road of the petitioner at a point 4,000 feet south of the crossing was laid on a grade twelve or thirteen feet below the grade at the proposed point of crossing, it would, in times of floods, be several feet under water; consequently the respondents based their estimate upon a grade which their evidence tended to show would be about two feet above high water mark, it being contended that whether the cross-

ing was grade or overhead, the road of petitioner south of the crossing would necessarily have to be constructed on a grade which would be out of reach of the water during the season when the surrounding territory was flooded.

After the conclusion of the evidence and at the suggestion and request of counsel for the respective parties, the commission directed its consulting engineer to personally inspect the place of the proposed crossing and the surrounding territory and prepare and present to the commission an estimate of the cost of separating the grades at this point, which was accordingly done. From this estimate thus prepared, it appears that the cost of a grade crossing would be $48,422.21 and the cost of an overhead crossing $386,650.28, the excess for an overhead crossing over the cost of a grade crossing being $338,228.07. It also appears that should the respondents depress their track three feet, in accordance with the proposition of Mr Miller, above referred to the cost would be $295,162.36 for an overhead crossing over the cost of a grade crossing.

In view of the serious conflict in the evidence, only partially explained by the different bases of the estimates, we are disposed to accept the figures presented by the consulting engineer of the board as correct.

Under the law as it now stands, this commission is not authorized to apportion the cost of separating grades at railroad crossings, but the entire cost must be borne by the road seeking to cross.

The question then is, shall the peitioner be required to construct an overhead crossing at this point, at an expense of nearly $300,000.00, or may a grade crossing, properly protected by the most improved interlocking device, be permitted? And if so, would such action be consistent with the proper protection of life and property and the rights of the senior road?

The statute conferring jurisdiction upon this commission "to prescribe the place where and manner in which crossings shall be made" was passed in the year 1889. As has been suggested in former opinions of the commission, a reading of the statute plainly demonstrates that it was not the intention of the Legislature to prohibit the construction of grade crossings in all cases. It was undoubtedly considered that cases would arise where it would be entirely proper to permit the construction of such crossings, protected, either by interlocking devices or only by a compliance with the provisions of the statute requiring all trains, when approaching a crossing with another railroad upon the same level, to come to a full stop before reaching such crossing. If there has been any change in the public policy of the State in this regard since the passage of the Act of 1889, it has not been evidenced by any action on the part of the Legislature.

An examination of the decisions of this commission, rendered after the passage of this Act, will show that in certain cases it has been deemed proper to permit grade crossings to be constructed, in some cases with and in some cases without, interlocking devices to protect the same, while in others a separation of grades has been required, each case being decided on its own merits without attempting to lay down a rule applicable to all cases. We think it must be admitted, however, that in later years the general rule adopted by our immediate predecessors has been to separate all grades, where the circumstances of the case would permit, and where by reason of the frequency of the passage of trains over the proposed crossing, or for other reasons, life and property could not be otherwise adequately protected. And with this general rule we are in entire accord, believing, as we do, that the mere question of expense should not be considred as of controlling importance where the number of trains to be operated over the proposed crossing, or other conditions surrounding the case, would prevent the proper protection of life and property.

The location of petitioner's road, its length, the population of the cities along its line and its connection with other railroads, leads to the conclusion that its traffic will not be very heavy or its trains numerous, at least for many years to come. The evidence discloses that a comparatively small number of trains are now operated by the respondents over their line at the proposed point of crossing. It also discloses that if a grade crossing is permitted, a train on such crossing can be seen for a distance of at least

2,000 feet from either direction on the respondent's road and for a greater distance on the petitioner's line.

In view of these facts and the large expense of an overhead crossing to the petitioner, we are of opinion that with the installation of the most improved interlocking device, a grade crossing should be permitted, as asked for in the petition. And we are further of opinion that such manner of crossing at the place mentioned will not unnecessarily impede or endanger the travel or transportation upon the respondent's railroads.

It is therefore ordered and decided that petitioner, the Cairo & Thebes Railroad Company, have leave to cross with its tracks at grade the track of the respondent, the Eastern Illinois & Missouri Railroad Co. now operated by the respondents, the Chicago & Eastern Illinois Railroad Company and the Illinois Central Railroad Company, at the place and in the manner specified in the petition on file in this cause, the right of way for such crossing being first obtained as provided by law.

It is further ordered and decided that such crossing be protected by a proper and adequate interlocking device, to be installed, maintained and operated by and at the expense of the Cairo & Thebes Railroad Company; that said Cairo & Thebes Railroad Company cause to be prepared and presented to this commission without unnecessary delay, complete and detailed plans and specifications of the interlocking plans proposed to be installed at said crossing, for the approval of this commission and that in the operation of such device and the use of such crossing, trains on the respondents' road shall be given preference over trains of the same class on the petitioner's road. This cause will be taken under advisement and a final order entered upon the presentation of plans and specifications for such interlocking plant and the approval of the same.

[Signed.] W. H. Boys, *Chairman*,
B. A. Eckhart, *Commissioner*.
J. A. Willoughby, *Commissioner*.

April 22, 1907.

Springfield Belt Railway Co.,
vs.
Chicago and Alton Railroad Co.

Petition to Cross at Grade at Iles Junction.

Petition filed Jan. 29, 1907.
March 4, 1907. Place of proposed crossing viewed by commission.
April 3, 1907. Case heard before the commission.
May 29, 1907. Order of the commission entered of record as follows:

The Springfield Belt Railway Co.,
vs.
Chicago and Alton Railroad Co.

Petition for Grade Crossing at Iles Junction.

Shutt, Graham & Graham, for Petitioner.
Mr. James Miles, for Respondent.

The petition in this case was filed Jan. 27, 1907, and it is alleged among other things that the petitioner is a corporation organized under the laws of this State; that it is engaged in constructing a belt line of railroad around the city of Springfield, and has located and surveyed its route and obtained a portion of the necessary right of way, that said route crosses the right of way and tracks of the respondent at Iles, Illinois, and at a point about 200 feet south of the present crossing of the Wabash Railroad Company over the respondent's tracks, that it desires to cross respondent's

tracks at grade and is willing to be at the entire expense of putting in said crossing and maintaining and operating the same; that there is an interlocking plant at the point where the Wabash Railroad Company crosses respondent's tracks at grade and it is willing that its tracks be connected with such interlocker at its expense and offers to pay any additional expense that may be necessary in the operation of such interlocker.

The place of the proposed crossing was viewed by the commission on March 4, 1907, and the case set for hearing on March 5, 1907, at the office of the commission in Springfield, Illinois, at which time and place the evidence offered by the parties was heard and the cause taken under advisement. Subsequently, on the application of respondent, leave was granted the parties to introduce further testimony and reargue the case on May 7, 1907.

At the proposed point of crossing the respondent has two tracks running almost due north and south. The proposed line of the petitioner will cross these tracks at right angles. The surface of the ground in the immediate vicinity of the proposed crossing is nearly level. It is claimed by the petitioner that the expense of constructing an overhead crossing at this point will be very large and that inasmuch as the Wabash Railroad Company crosses respondent's tracks at grade 200 feet north of its proposed crossing that therefore, no good reason exists why it should not be permitted to connect with the interlocker at the Wabash crossing and also cross at grade.

The evidence as to the cost of an overhead crossing (it being conceded by both parties that a subway is not feasible) as is usual in such cases, is not very satisfactory. That on the part of the respondent, being to the effect that the overhead crossing can be put in for about $20,000. On the other hand, the evidence offered by the petitioner tends to show that to cross these tracks by an overhead crossing would cost about $150,000.

We are inclined to the opinion that a proper and suitable crossing with a working gradient would cost more than the estimate of the respondent and very much less than the estimate of the petitioner. In the view we take of the matter, however, it is not necessary to determine what the exact cost would be; suffice it to say that it will not be so large as to have any very great bearing on the question to be decided.

The uncontradicted evidence in the case shows that there are, at the present time, 52 train movements per day over respondent's road at the point of the proposed crossing. Respondent's Murrayville line branches from the main line a few hundred feet south of the proposed crossing and when it is opened about July 15th, there will be added ten regular trains, making a total of at least 62 train movements every twenty-four hours.

The petitioner's line is being constructed around the city of Springfield to connect its line running south of Springfield with its line or lines running north and this is made necessary by the fact that it cannot haul freight through the city, its tracks being laid in the public streets. The evidence does not show how many cars or trains on petitioner's road would pass over this proposed crossing in twenty-four hours, but if its projectors' expectations are realized the number will not be inconsiderable.

Under these facts, should this commission consent to a grade crossing at the point in question? The proposition of petitioner to join with the respondent and the Wabash Railroad Company in the separation of the grades of the three roads at this point, is not without merit; however, the Wabash Railroad Company is not a party to this proceeding and therefore this commission has no power to make or enforce an order compelling it to join in such an arrangement. Such being the case, would the mere fact that the Wabash Railroad Company crosses the respondent's tracks at grade within two hundred feet of the proposed crossing justify the commission in allowing the petitioner to cross at grade? If so, then another crossing might be permitted in the same vicinity and still another, and so on *ad infinitum*.

The statute governing this proceeding is in part as follows:

"That hereafter any railroad company desiring to cross with its tracks the main line of another railroad company, shall construct the crossing at such place and in such manner *as will not unnecessarily impede or endanger the travel or transportation* upon the railroad so crossed."

After full investigation, *and with due regard to the safety of life and property* said board shall give a decision prescribing the place where and the manner in which said crossing shall be made. * * *"

We do not feel that we would be giving *due regard to the safety of life and property* should we permit a grade crossing at this point, nor are we prepared to say that such crossing would *not unnecessarily impede or endanger the travel or transportation* on the respondent's road.

Grade crossings where trains are numerous, no matter how thoroughly they maye be protected by interlocking devices are dangerous. Notwithstanding the great skill and ingenuity displayed by the manufacturers of these devices in perfecting them and the strict orders of the railroad companies to their employés regarding their use, accidents do not occur and this largely because of the fact, that what may be called the "human agency" is ever present, and no device has yet been invented by which it may be entirely eliminated. Cases have been presented in the past and may arise in the future, where the commission would feel justified, all the facts and circumstances considered, in permitting grade crossing to be constructed, but as far as we are able to discover, not one of the elements which would justify such action, can be found in this case.

It is therefore ordered and decided that the Springfield Belt Railway Company have leave to cross the tracks of the Chicago and Alton Railroad Company at Iles Junction, at the point mentioned in the petition filed herein, by means of an overhead crossing; that said overhead crossing shall leave twenty-two (22) feet in the clear between the top of the rails of the Chicago and Alton Railroad and the lower part of the superstructure of said overhead crossing; that the petitioner pay the entire cost of the construction and future maintenance of said overhead crossing, and also the costs and expenses of the commission incurred in this cause.

Dated this 29th day of May, 1907.

(Signed) W. H. Boys, *Chairman.*
B. A. Eckhart, *Commissioner.*
J. A. Willoughby, *Commissioner.*

Decatur, Sullivan and Mattoon Traction Co.,
vs.
Vandalia Railroad Co.

Petition to Cross Vandalia R. R. at Grade near Hervey City, Ill.

Petition filed May 7, 1907.
May 29, 1907. Place of proposed crossing viewed by the commission.
June 4, 1907. Case heard before the commission.
July 19, 1907. Order of the commission entered of record as follows:

Before the Railroad and Warehouse Commission of the State of Illinois.

Decatur, Sullivan & Mattoon Transit Company,
vs.
Vandalia Railroad Company.

Petition to Cross at Grade.

APPEARANCES:

For Complainant, Mr. Clokey.
For Respondent, Mr. W. C. Outen.

The petitioner in this case is organized under the general railroad laws of this State, and, the road when built, is to be operated by electricity. The line will extend from Decatur to Mattoon, a distance of about fifty miles.

It is proposed by the petitioner to cross the main track of the respondent at Hervey City and the only question in the case is, whether or not such crossing shall be at grade.

It appears from the evidence submitted that the respondent and the Illinois Central Railroad Company jointly own and operate a railroad track between Decatur and Hervey City. From this latter point the respondent operates a line extending in an easterly direction through Arcola while the line of the Illinois Central Railroad Company runs in a southeasterly direction through Mattoon.

The point of crossing selected by the petitioner is at or near the junction of the lines of the respondent and the Illinois Central Railroad Company.

When the road of the petitioner is put in operation it is proposed to run about thirty cars or trains over this crossing every twenty-four hours. During the past year the average number of trains passing over this part of the respondent's road each day is shown to have been from ten to twelve and the prospects for the immediate future are that this number will be increased rather than diminished.

It is not claimed by the petitioner that an overhead crossing can not be constructed at this point. Indeed, the evidence in the case and our views of the premises convince us, that the conditions are most favorable for the construction of such a crossing. There is a slight rise in the ground both to the north and the south of respondent's line, which would materially lessen the cost of such a structure, and it was agreed upon at the hearing, that the cost of an overhead crossing would probably not exceed the sum of $20,000. This, when compared with the cost of installing, maintaining and operating an interlocking plant at this point, seems to us to be not only the better, but the cheaper plan, but whether this is true or not can not make any difference. All agree that grade crossings are a source of danger to life and property and where a considerable number of trains are to be moved over the crossing daily, and the cost of separating the grades is not excessive, such crossings should not be permitted.

A "Y" track connects the respondent's track with the tracks of the Illinois Central Railroad Company, and the petitioner proposes to cross this "Y" track at a point about 1,200 to 1,500 feet southwest of the proposed crossing over the main line. This track is rarely used, it being shown that the exchange of cars would average not more than five (5) per month, nor is it claimed by anyone that any necessity exists for separating the grades at this point.

We are therefore of opinion that due regard for the safety of life and property requires that an overhead crossing be constructed by the petitioner over the main track of the respondent, but that no necessity exists for such a crossing over the "Y" track.

It is therefore ordered and decided that the Decatur, Sullivan and Mattoon Transit Company have leave to cross the main tracks of the Vandalia Railroad Company at Hervey City at the point mentioned and described in the petition filed herein, by means of an overhead crossing; that said crossing shall be so constructed as to leave twenty-two (22) feet in the clear between the top of the rails of the Vandalia Railroad Company and the lowest part of the superstructure of said overhead crossing; that said petitioner also have leave to cross the "Y" track connecting the Vandalia Railroad Company with the Illinois Central Railroad Company at the point mentioned in said petition, at grade, and that leave be granted the respondent to apply to the commission at any time hereafter for an order requiring the protection of said grade crossing by derail or otherwise in case it deems such action necessary for the protection of life or property.

It is further ordered that the petitioner pay the entire cost of the construction and future maintenance of said overhead crossing and grade crossing, and also the costs and expenses of the commission incurred in this cause.

Dated this 19th day of July A. D. 1907.

(Signed) W. H. Boys, *Chairman.*
B. A. Eckhart, *Commissioner.*
J. A. Willoughby, *Commissioner.*

Atchison, Topeka and Santa Fé Ry. Co.
vs.
Elgin, Joliet and Eastern Ry. Co.

The Railroad and Warehouse Commission having been requested to arbitrate as between the above companies, as to the construction of the terms of a contract for a crossing at Coal City, Ill., and the commission having consented to so act, held a meeting in Chicago on the 9th day of May, 1907, to hear the case.

APPEARANCES:

For the A. T. & S. F. Ry. Co., Mr. C. A. Morse, Chief Engineer.
For the A. T. & S. F. Ry. Co., Mr. Thos. S. Stevens, Signal Engineer.
For the E. J. & E. Ry. Co., Mr. R. W. Campbell, Attorney.
For the E. J. & E. Ry. Co., Mr. R. D. Campbell, General Manager.

The commission having given both parties to this controversy an opportunity to fully explain, decided as follows:

Atchison, Topeka and Santa Fé Railway Company
vs.
Elgin, Joliet and Eastern Railway Company.

Opinion on Certain Questions Submitted to the Commission for Decision.

The Chicago, Santa Fé and California Railway Company being the owner of a line of railroad extending through Coal City, Illinois on the 3rd day of October, 1888, entered into a contract with the Gardner, Coal City and Northern Railway Company granting to the latter named road "the right to lay down, maintain and operate its two main tracks of standard guage over and across the track of the Chicago, Santa Fé and California Ry. Co. near the western limits of Coal City, Illinois" upon certain terms and conditions in such contract expressed. The contract, by its express terms, extends to and is binding upon the respective successors and assigns of the parties. The Atchison, Topeka and Santa Fé Railway Company succeeded the Chicago, Santa Fé and California Railroad Company and the Elgin, Joliet and Eastern Railway Company succeeded the Gardner, Coal City and Northern Railway Company.

It is provided in the contract among other things that if at any time a difference of opinion between the parties shall arise as to the rights and duties of either, the question in dispute shall be referred to a board of arbitrators to be selected in the manner therein provided. Such difference of opinion having arisen, this commission, at the request of both of the parties, consented to act as arbitrators, and the contentions of the respective parties were submitted to the commission at its regular meeting in Chicago on the 9th instant.

It appears that at the present time, the Santa Fé Company has two main tracks at the point of crossing, and the Elgin, Joliet and Eastern Railway Company has but a single track, although by the terms of the contract it was entitled to construct two tracks.

The contract in question contains the following provisions:

First—That the first party (Santa Fé Company) shall not be disturbed in the use of the tracks now owned and operated by it at the point of crossing aforesaid, and said party of the second part (Elgin, Joliet and Eastern Company) agrees that nothing shall be done or suffered to be done by it, that shall in any manner materially impair the usefulness of said existing track of the party of the first part or of such track or tracks as may hereafter be constructed by the said party of the first part *as hereinafter provided.*

"*Second*—It is understood and agreed between the parties hereto that the said party of the first part shall have the right to lay down, maintain and operate one or more tracks in addition to its present main track, *at the point of said crossing.*

"*Third*—The said party of the second part agrees that it will furnish the material for, and construct, put in and maintain all crossing frogs, and will furnish and put in at their own cost and expense, all crossing signals, gates, targets and other fixtures and interlocking devices necessary to enable the said first party to run its trains over said crossing without stopping. The interlocking system used, to be that of the Union Switch and Signal Company, or of such other system as may be approved by the party of the first part, and the party of the second part will make necessary application to obtain the approval of the same by the Railroad and Warehouse Commissioners of the State of Illinois and diligently prosecute the same. * * *"

"*Fourth*—It is further agreed that the cost and expense of maintaining and operating the said interlocking system shall be borne jointly by the parties hereto; the party of the first part paying one-third, and the party of the second part two-thirds of such cost * * * *."

The difference of opinion between the parties arises out of the following facts: The Santa Fé Company is desirous of constructing two passing tracks at Coal City, one on the north side of its main tracks and one on the south side. It is, we think conceded by both parties that it is impracticable to extend these passing tracks across the Elgin, Joliet and Eastern main track. Because of that fact the Santa Fé Company proposes to shorten its passing track on the north side of its main track several hundred feet and connect the east end of such track with its main track a very short distance west of the crossing and within the limits of the interlocking device there maintained. It is then proposed to put in a crossing between the main tracks and build its south passing track east of the Elgin, Joliet and Eastern crossing, the west end of such track and the switches connecting it with the main track, all being within the limits of the interlocker.

On these facts, it is contended by the Santa Fé Company, that under the contract it is the duty of the Elgin, Joliet and Eastern Company to connect the switches and derails at the end of its north passing track, and at the west end of its south passing track, and the necessary switches to operate the crossover, with the interlocking plant at its own expense, and to maintain and operate the additional levers required, under the terms of the contract, that is to say, that it, the Elgin, Joliet & Eastern Company shall, in addition to connecting such switches and derail with the interlocker at its own expense, pay two-thirds of the cost of maintaining and operating the additional levers required.

On the other hand, it is contended by the Elgin, Joliet and Eastern Company that under the terms of the contract, it cannot be required to connect any of the switches or derails in question with the interlocker, and this for the reason that none of the proposed tracks will cross its main track.

It admits, at least, so far as this case is concerned, that if any or all of the proposed tracks crossed its main track it would be required to furnish and put in the necessary frogs, erect the necessary signals and make the necessary connections with the interlocker.

It will thus be seeen that the only question submitted to this commission for decision is purely a legal one and relates entirely to the question of the proper construction of the contract between the parties.

We think there could be no question as to the right of the Sant Fé Company to extend both of the proposed passing tracks over the track of the Elgin, Joliet and Eastern Company, and, should it elect so to do, it would undoubtedly be the duty of the latter company to furnish, put in and maintain the necessary crossing, and make the proper connections with the interlocker. Such action on the part of the Santa Fé Company, would not only cause an immediate expenditure of a considerable sum of money, by the Elgin, Joliet and Eastern Company, but it would be a continuing expense, and would of course increase the danger to the life and property at the crossing.

Whether or not, in consideration of the waiver by the Santa Fé Company in the interests of safety, of its right to construct its tracks as above suggested, the Elgin, Joliet and Eastern Company should as a matter of equity accede to the demands of the Santa Fé Company, is a question which we

understand, is not submitted to us for determination. The Elgin, Joliet and Eastern Company stands upon all of its legal rights, and such being the case, we are of the opinion that under the provisions of the contract above quoted (they being the only ones pertinent on the question here considered) the Elgin, Joliet and Eastern Company cannot be required to do or perform any of the acts or things contended for by the Santa Fé Company. It would serve no useful purpose to further extend this finding by giving in detail the process of reasoning by which we have arrived at this conclusion; suffice it to say, that applying the ordinary rules of construction to the above quoted provision of this contract, we are of the opinion that the legal duty of the Elgin, Joliet and Eastern Company to do and perform the things therein mentioned on its part to be done and performed arise only, when the Santa Fé Company constructs or desires to construct a track or tracks across the Elgin, Joliet and Eastern tracks.

Dated this 17th day of May, A. D. 1907.

(Signed) W. H. Boys, *Chairman.*
B. A. Eckhart, *Commissioner.*
J. A. Willoughby, *Commissioner.*

Illinois Central R. R. Co.

vs.

Pittsburgh, Ft. Wayne and Chicago Ry. Co.
and its lessee, the Pennsylvania Co.,
Lake Shore and Michigan Southern Ry. Co.
New York, Chicago & St. Louis Ry. Co.
and the city of Chicago.

Petition for an Investigation of Track Elevation and for a Separation of Grades.

Petition filed June 6, 1907.
June 26, 1907, motion to dismiss filed by P., Ft. W. & C. Ry.
July 11, 1907, case heard before commission.
August 6, 1907, finding and opinion of the commission filed for record as follows:

Before the Railroad and Warehouse Commission of the State of Illinois.

Pittsburg, Ft. Wayne & Chicago Railway,
and its lessee the Pennsylvania Company,
Lake Shore and Michigan Southern Railroad Company,
New York, Chicago and St. Louis Railroad Company,
and the City of Chicago.

Petition to Require Separation of Grades at Grand Crossing.

APPEARANCES:

For I. C. R. R. Co.—J. M. Dickinson, John G. Drennan.
For N. Y. C. & St. L. Ry. Co.—Glennon, Cary, Walker & Howe.
For L. S. & M. S. Ry. Co.—Glennon, Cary, Walker & Howe.
For P., Ft. W. & C. Ry. Co.—Loesch, Scofield &. Loesch.
For Penn. Co.—Loesch, Scofield & Loesch.

The petition in this case was filed in the office of the secretary of the commission on June 6, 1907, and it is alleged that the petitioner, the Illinois Central Railway Company, is a railroad corporation organized under and by virtue of the laws of the State of Illinois; that it owns and operates about twenty-one hundred miles of railroad within the State and an equal number of miles of railroad in other states; that its principal terminal for its system of railroad extends from Randolph street in the city of Chicago

to the southern city limits; that its main line and tracks cross the main line and tracks of the respondents at grade at or near Grand Crossing in said city; that about one hundred of petitioner's suburban trains, and about sixty through passenger trains cross the respondents' tracks at Grand Crossing daily, and that in addition thereto an aggregate of about thiry-five hundred freight cars are daily moved by petitioner and its lessees over this crossing; that petitioner is informed and believes and charges the fact to be that the respondent railroad companies operate a larger number of passenger and freight trains over said crossing daily than does petitioner.

It is further alleged that on the 29th day of September A. D. 1902, the city of Chicago passed an ordinance, requiring the petitioner and respondents to elevate their tracks at Grand Crossing, and that all of the parties to this cause accepted said ordinance and that it is binding upon each and all of them; that if the tracks of petitioner and respondents are elevated in accordance with the provisions of said ordinance without the grade of petitioner's and respondent's tracks being separated "said portion of the tracks of your petitioner and said portion of the tracks of each of the defendant railroad companies, at and in the vicinity of said Grand Crossing, will be in an unsafe condition and dangerous to the security of persons doing business therewith as passengers upon the respective railroads which are parties hereto; that a grade crossing of all of said railroad tracks, when elevated in accordance with the terms and conditions of said ordinance, will render the operation of their trains unsafe and places in constant peril all passengers carried on the passenger trains of said railroad passing along and over their respective tracks at and in the vicinity of said Grand Crossing; and will be unsafe and dangerous to the security of the employés of your petitioner and the defendant railroad companies operating their freight and passenger trains."

It is also alleged that petitioner has endeavored to reach an agreement with the respondents, relative to the separation of grades at this point, but has beeen unable to do so. A plan for the separation of grades is then set forth in detail, and the prayer is "that an order may be made by your honorable body in accordance therewith for the elevation of said railroad tracks at and in the vicinity of said Grand Crossing, as may be deemed just in the premises, to the end that the grade of your petitioner's tracks and the grade of the defendant companies' tracks shall be separated."

Due and proper notice of the filing of the petition was given to each of the respondents, and on the 5th day of July 1907, the Lake Shore and Michigan Southern Railway Company filed its answer admitting all of the material allegations of the petition and joining in the prayer of the petition as above set forth. On the 9th day of July, 1907, a like answer was filed by the New York, Chicago & St. Louis Railway Company. No appearance was entered nor answer filed by the city of Chicago.

On June 26, 1907, the Pittsburg, Ft. Wayne & Chicago Railway Company and the Pennsylvania Company filed a motion to dismiss the petition for the following reasons:

"(1) That the said Railroad and Warehouse Commission of the State of Illinois has not jurisdiction under the laws of the State of Illinois of the subject matter of said petition;

"(2) That the said commission is not authorized by the statutes of the State of Illinois to consider and hear the subject matter of said petition;

"(3) That the said commission is not authorized by the laws of the State of Illinois to grant the prayer of said petition, or any part thereof."

The question presented by this motion is an important one, and, as far as we are advised, has never been directly passed upon by this commission nor any of the courts of this State. Briefly stated, the question is: has this commission the power to compel the separation of the grades of two or more railroads, at crossings heretofore constructed on the same grade, on the petition of one of the railroads interested?

This commission is a creature of the statute, and unless power or jurisdiction to enter the order asked for by the petitioner, is conferred upon us, either expressly or by necessary implication, the motion to dismiss must be sustained.

Indeed it has been held that railroad commissions possess no power except such as is *expressly* conferred by the statutes. See Railroad Commissioners vs. Oregon Railway and Navigation Co., 17 Oregon 65, where it is said:

"The jurisdiction of such commission is not given by implication. Commissioners of that character are mere creatures of statute, and possess no power except what the statute expressly confers upon them * * * * It is not, it seems to me, requiring too much of the legislative branch of the government to exact, when it creates a commission and clothes it with important functions, that it shall define and specify the authority given it, so clearly that no doubt can reasonably arise in the mind of the public as to its extent."

The rule is stated somewhat differently in 2 Elliott on Railroads, sections 675 and 683, as follows:

"(675) Government control of railroads in many of the states is exercised through the instrumentality of officers generally called railroad commissioners. These officers, of course, derive all their power from the statute which creates the commission, and a railroad commission is a tribunal possessing naked statutory powers."

"(683) In ascertaining the jurisdiction of such a tribunal the statute creating it must always, it is obvious, be consulted, since the only jurisdiction it possesses is such as the statute confers. We suppose that the ordinary rules which govern *quasi* judical tribunals created by statute and invested with naked statutory powers, govern boards of railroad commissioners, and that nothing can be intended to be within their jurisdiction which is not placed there by statute. It is not necessary, as we believe, that the statute should expressly and explicitly define the jurisdiction of the commissioners, but it is sufficient if jurisdiction is conferred in general terms. If jurisdiction over a general subject is conferred then authority over branches and details of that subject is conferred by necessary implication."

Conceding the quotation from Elliott to be a correct statement of the law, the question then is: does the statute creating this commission, or do any of the Acts passed subsequent thereto, expressly or by necessary implication confer power or jurisdiction on this commission to enter the order asked for by the petitioner?

The Act creating the commission was passed in 1871. Its title is "An Act to establish a board of railroad and warehouse commissioners, and prescribe their powers and duties." It is not claimed by counsel for petitioner that this Act *expressly* confers upon the commission the power we are asked to exercise or the jurisdiction we are asked to assume, but it is contended that section 11½ of the Act confers that power and jurisdiction by *implication.* This section was added to the original Act in 1887, and is in part as follows:

"* * * Whenever it shall come to the knowledge of said board, by complaint or otherwise, that any railroad bridge or trestle, or any portion of the track of any railroad in the State is out of repair, or is in an unsafe condition, it shall be the duty of such board to investigate, or cause an investigation to be made, of the condition of such railroad bridge, trestle or track and may employ such person or persons who may be civil engineers or engineers, as they shall deem necessary for the purpose of making such investigation, and whenever in the judgment of said board, after such investigation, it shall become necessary to rebuild such bridge, track or trestle, or repair the same, the said board shall give notice and information in writing to the corporation of the improvements and changes which they deem to be proper. And shall recommend to the corporation or person or persons owning or operating such railroad that it, or he, or they make such repairs, changes or improvements, or rebuild such bridge, or bridges, on such railroad as the board shall deem necessary, to the safety of persons being transported thereon. * * * And said board shall, after having given said corporation or person or persons operating such railroad an opportunity for a full hearing thereon, if such corporation or person shall not satisfy said board that no action is required to be taken by it or them, fix

a time within which such changes or repairs shall be made, or such bridges, tracks or trestles shall be rebuilt, which time the board may extend.* * *"

All railroads are required by the provisions of this section to comply with such recommendations of the board as are *just and reasonable*, and provision is made for the enforcement of such recommendations by *mandamus*.

It is claimed, that inasmuch as this section of the statute gives power to the board, in case "any portion of the track of any railroad in this State * * * is in an unsafe condition," to compel such track to be rebuilt or such necessary changes or improvements to be made as shall be deemed necessary "to the safety of persons being transported thereon," that therefore, if it is made to appear in this case that the track is unsafe because of the fact that the several railroads cross at grade, the commission may enter an order compelling the separation of grades.

We are unable to concur in this construction of the statute. This section was evidently added, by the Legislature, to the original Act creating the commission, in order that the commission might have power, in case any railroad bridge, trestle or track was found to be out of repair or in an unsafe condition, to compel such company to repair or rebuild such bridge, trestle or track or to improve or change the same so as to make travel over the road reasonably safe. The Legislature evidently did not have in mind, when this Act was passed, the dangers arising from grade crossings, but only such dangers as might arise from permitting the rails, ties or roadbed to become out of repair. Railroad crossings are not mentioned in this section, nor indeed are they mentioned in the Act which it amends. Had it been the intention of the Legislature to confer power on this commission to compel the separation of grades how easy it would have been to have said so.

Again, if the construction placed upon this section by counsel for petitioner is correct, viz: that it gives to this commission power to compel the separation of grades, not because any bridge, track or trestle is, in and of itself, out of repair or in an unsafe condition, but because such track crosses or is crossed by the track of another railroad company at grade and is therefore unsafe, then *a priori* the commission is given the power to compel the protection of such crossing by interlocking device or otherwise. If, under this section, we have the power to separate the grades in order to remove an unsafe condition, we certainly have the power to compel the railroads interested, to interlock the crossing in lieu of a separation of grades, if, in the opinion of the commission such precaution would render the crossing reasonably safe.

So far as we are advised, it has never been claimed by any one that the power of this commission to compel the interlocking of existing crossings was derived from the section under consideration. Such power was never exercised by this commission until after the passage of an Act in 1891, entitled, "An Act to protect persons and property from danger at the crossings and junctions of railroads by providing a method to compel the protection of the same." And in all cases which have come before the commission its action was based upon the provisions of the last mentioned Act.

If this commission was granted the power to separate grades or require interlocking plants to be constructed, by the section under consideration, what necessity was there for the passage of the crossings Acts of 1889 and 1891? The mere fact of the passage of these Acts, giving the commission power to compel interlocking or the separation of grades where a *new crossing* is about to be constructed, and the protection of crossings *already constructed*, by interlocking devices, seems to us to be conclusive of the fact that this power was not intended to be conferred by the amendment to the Act of 1871.

That the dangers incident to the operation of trains over the crossings in question, are very great, can not be denied. That some plan should be devised to minimize these dangers is plainly apparent.

In case of a failure on the part of the interested parties to agree upon a plan which will afford protection to life and property at this crossing, the power to compel such an arrangement might very properly be lodged with

this commission or some other proper authority, but, being of the opinion, that under the law, as it now stands, we have no power to grant the relief prayed for, the motion to dismiss will be sustained.

Dated this 6th day of August, 1907.

(Signed) W. H. Boys, *Chairman.*
B. A. Eckhart, *Commissioner.*
J. A. Willoughby, *Commissioner.*

Cairo and Thebes R. R. Co.

vs.

Southern Illinois and Missouri Bridge Co. *et al.*

Petition to Intersect, Join and Unite with the Tracks of the Bridge Company at Thebes, Ill.

Petition filed June 15, 1907.
July 8, 1907, place of proposed intersection viewed by commissioners.
July 9, 1907, case heard before the commission at its office in Springfield.
October 22, 1907, order of the commission entered of record as follows;

Before the Railroad and Warehouse Commission of the State of Illinois.

Cairo & Thebes Railroad Company

vs.

Southern Illinois & Missouri Bridge Co.
Illinois Central Railroad Co.
St. Louis Southwestern Railroad Co.
St. Louis, Iron Mountain & Southern Railway Co.
Chicago & Eastern Illinois Railroad Co.

APPEARANCES:

J. M. Hamill and William S. Dewey, for Petitioner.
John G. Drennan, E. H. Seneff, S. H. West, W. H. Miller, M. L. Clardy and Foreman & Whitnel, for Respondents.
Walter Warder, for Cairo Commercial Club.

Petition for leave to connect tracks.

The petition in this case was filed by the Cairo and Thebes Railroad Company, a corporation organized under the general railroad laws of this State, with authority to construct, maintain and operate a railroad from the city of Cairo to the village of Thebes, both of which are located in Alexander county. The Southern Illinois and Missouri Bridge Company is a corporation organized under the general incorporation laws of this State for the purpose of building a bridge across the Mississippi river from a point in Alexander county to a point opposite thereto in the State of Missouri. The respondent railroad companies are tenants of the Southern Illinois and Missouri Bridge Company, and its bridge and the approaches thereto on both sides of the river are used as a part of their respective lines of railroad. The prayer of the petitioner is that it may be permitted "to intersect, join and unite at grade its tracks with the tracks of the Southern Illinois and Missouri Bridge Company" at a point particularly described in the petition.

A preliminary question is raised in the case by a motion made by the respondents to dismiss the petition for want of jurisdiction in this commission.

It appears that the bridge company was organized under the general incorporation laws of this State, section 1 of which is as follows:

"That corporations may be formed in the manner provided by this Act for any lawful purpose except banking, insurance, real estate brokerage, the operation of railroads and the business of loaning money: *Provided*, that horse and dummy railroads and organizations for the purchase and sale of real estate for burial purposes only may be organized and conducted under the provisions of this Act: *And, provided, further*, that corporations formed for the purpose of constructing railroad bridges shall not be held to be railroad corporations."

It is insisted that this commission is purely a creature of the statute and possesses no power except what the statutes expressly confers, and that while it is expressly given jurisdiction where one *railroad company* desires to cross (or intersect) with its track or tracks the main track of another *railroad company*, still, that inasmuch as the bridge company is not a *railroad company*, its motion to dismiss for want of jurisdiction should be sustained.

Section 19 of the general railroad law provides:

"Every corporation formed under this Act shall, in addition to the powers hereinbefore conferred, have power * * * * * * * *

"Sixth—To cross, intersect, join and unite its railways with any other railway before constructed, at any point in its route, and upon the grounds of such other railway company. * * * * * * *"

Section 9 of the Act of Congress authorizing the construction of this bridge across the Mississippi river is as follows:

"That all railroad companies desiring the use of any bridge constructed under this Act shall have, and be entitled to, equal rights and privileges relative to the passage of railway trains and cars over the same and over the approaches thereto, upon payment of a reasonable compensation for such use. * * * * * * * *"

Under these provisions there can be no doubt as to the right or power of the petitioner to connect its tracks with the tracks of the bridge company, nor is there any doubt as to the duty of the bridge company to permit such connection. Indeed, the bridge company makes no objection to a connection, but does object to the particular connection selected by the petitioner. Because of its inability to agree with respondents upon the *place* of connection, the petitioner filed this petition on the theory that by virtue of the authority conferred by an Act entitled, "An Act in relation to the crossing of one railroad by another, and to prevent danger to life and property from grade crossings," this commission had the power to prescribe the place where and the manner in which the connection should be made.

Section 1 of the Act last referred to, as it stood at the time of filing the petition, was as follows:

"That hereafter any railroad company desiring to cross with its tracks the main line of another railroad company, shall construct the crossing at such place and in such manner as will not unnecessarily impede or endanger the travel or transportation upon the railway so crossed. If in any case objection be made to the place or mode of crossing proposed by the company desiring the same, either party may apply to the Board of Railroad and Warehouse Commissioners, and it shall be their duty to view the ground and give all parties interested an opportunity to be heard. After full investigation, and with due regard to safety of life and property, said board shall give a decision prescribing the place where and the manner in which such crossing shall be made. * * * * * * * *"

By a subsequent section of the statute it is provided that every junction of two or more railroad tracks shall be taken and deemed to be a crossing; and consequently if, under the facts in this case the commission would have jurisdiction had the petitioner asked for a crossing instead of a connection, then it necessarily follows, we think, that it has jurisdiction in this case.

The question then is, whether or not the Legislature intended by the use of the words "railroad company," in the last section quoted, to limit the power of this commission to cases where one railroad corporation, actively

engaged in the business for which it was organized, desired to cross or intersect with its tracks the tracks of another corporation similiarly organized and engaged.

In the case of *Chicago Dock Company* vs. *Garrity, et al.*, 115 Ill., 155, the court had under consideration the ninetieth clause of section 1 of article 5 of the City and Village Act, which declares:

"The city council or board of trustees shall have no power to grant the use of, or the right to lay down, any railroad tracks in any street of the city to any steam or horse *railroad company*, except on a petition of the owners of the land representing more than one-half of the frontage of the street. * * * * * * *"

The Court said:

"It is very clear that 'natural persons' are here within the intention, although not within the letter, of the Act, for the injury against which protection is intended to be afforded is the laying of railroad tracks in the streets. By whom the tracks shall be laid and the cars thereon operated is, manifestly, of no consequence whatever. The same results, in all respects, will follow the laying of railroad tracks in the streets and operating cars thereon by individuals as will follow the laying of them by corporations. The use of the word 'company,' we have no doubt, was simply because such tracks are almost always laid and operated by companies. The clause should be read as including both corporations and individuals."

If the words "railroad company" include "natural persons," why may they not include a bridge company, which is expressly authorized by its charter to construct, maintain and own railroad tracks?

The object the Legislature had in view in passing the Act in question was, among other things, "to prevent danger to life and property," and no one will contend that the tracks of the bridge company are less dangerous because the corporation which owns them is organized under the General Incorporation Act, instead of under the Railroad Act.

The case above referred to was approved and followed in *McCann* vs. *The People ex rel*, 194 Ill., 526.

In the case of *Village of London Mills* vs. *White*, 208 Ill., 289, the Act relating to telegraph companies, section 4 of which provides, "No such company shall have the right," etc., was under consideration. The court said:

"Appellants contend that the Act of which section 4 *supra* is a part applies only to corporations. In so far as the Act confers the power of eminent domain, this is true; but in so far as it prescribes the method for obtaining the consent of corporate authorities to the erection of poles and the stringing of wires, it must be held applicable both to corporations and natural persons. Following the reasoning of this Court, in *Chicago Dock Company vs. Garrity*, 115 Ill., 155, 'the clause should read as including both corporations and individuals.'"

Our predecessors had occasion to consider this question in the case of *C., M. & St. P. Ry. Co.* vs. *Goddards et al.*, 2 Opinions of Commission 16, and there said:

"It may be insisted that the respondents are not a railroad company within the meaning of the statute, for the reason that the franchise is granted to Alpheus P. Goddard and Alpheus J. Goddard, as individuals. But, in view of the fact that they are to operate their road in connection with the General Electric Company a railroad operated by a corporation, and that their said road is to be a part of that system, and in view of the further fact that the statute, section one, provides that hereafter any railroad company (not a corporation) desiring to cross the main track of another railroad company shall construct its crossings in such a manner as not to unnecessarily impede or endanger the travel of said road, we are of the opinion, and so hold, that for the purpose of this Act, that any person, company or corporation desiring to cross another railroad track with a railroad track, must cross it at such place and in such a way that it will not unnecessarily impede or endanger the travel of the railroad company so crossed; and that it will not unnecessarily endanger the lives or property of the public, regardless of whether it is a railroad corporation or an individual, the law applying itself, and not to the owners or operators."

While we agree with the conclusion of our predecessors on this question and believe that the construction placed by them upon the section in question is the correct one, nevertheless we think there are facts in this case which completely and without any question justify our action in overruling the respondents' motion.

By its charter from the State of Illinois and the Act of Congress, the bridge company was authorized to construct a bridge across the Mississippi river and the necessary approaches thereto in order to provide for the passage of railway trains and cars.

In the construction of its bridge it found it necessary to build about two miles of double track railroad on the east and and a like amount on the west side of the river, and now owns and controls four miles of double track railroad exclusive of the tracks on the bridge proper.

Under certain contracts or leases, no less than four or five railroad companies, operating in the aggregate a very large number of trains, use these tracks and this bridge as a part of their respective railroads.

The bridge company owns neither engines nor cars, and its railroad tracks are intruth and in fact used exclusively and operated by its railroad tenants. Therefore, the tracks which the petitioner seeks to connect with are by reason of such leases or contracts the tracks of "another railroad company" or companies, and are therefore not only within the spirit of the Act conferring jurisdiction on this commission, but are within its literal terms.

One other reason is suggested why respondents' motion to dismiss should be sustained. It is insisted that if the bridge company is held to be a "railroad company," that then it is a railroad company engaged exclusively in interstate commerce, and that section 1 of the Hepburn Act gives to the Interstate Commerce Commission exclusive jurisdiction to determine the mode, place and manner of making connections with interstate roads by lateral or branch lines of railroads. We have carefully examined the Act in question and are of opinion that it in no way limits the power of this commission to pass upon the question presented by the petition filed in this case.

For the reasons above stated, the motion of the respondents to dismiss the petition for want of jurisdiction is denied.

The property of the bridge company consists of a double track steel railroad bridge, one-half mile or more in length. At the east end of the bridge proper is a concrete viaduct about 325 feet in length and approximately eighty-five feet above the level of the ground. At the east end this viaduct connects with an embankment, which at the point of connection is forty or fifty feet above the level of the ground. This embankment extends for a considerable distance east of this connection. The bridge company have and maintain over this bridge, viaduct and embankment a double track railroad. The point of connection selected by the petitioners is 360 feet east of the east end of the concrete viaduct. The respondents object to the connection being made at this point and suggest a point about 4,000 feet east of the east end of the bridge. It seems to be conceded by all parties that the point of connection should be protected by an interlocker, regardless of whether it is made at the place selected by the petitioner or the one suggested by the respondents.

The only question in the case on which there seems to be a difference of opinion is as to the proper place to make the connection.

If the connection is made at the point selected by the petitioner, the west derails on the bridge company's tracks must be placed about 120 feet out on the concrete viaduct, if the rule of the commission requiring it to be placed at least 500 feet from the fouling point is observed.

A large number of expert witnesses were examined by both petitioner and respondents. Without reviewing the evidence in detail, it is sufficient to say that the witnesses examined by the petitioner expressed the opinion that the point of connection near the end of the bridge could be properly and adequately protected by an interlocker and could be made equally as safe as the one suggested by respondents. On the other hand, the witnesses examined by respondents were all of the opinion that the connection at the end of the bridge could not be properly protected by an interlocker; that

if a train should be derailed on the concrete viaduct the consequences would be much more serious than they would be if such derailment occurred at a point off of the bridge and where the ground was comparatively level and therefore that the proper place for the connection was at the point suggested by the respondents.

That the connection near the bridge is much more desirable from the petitioner's standpoint must be conceded. The point selected by the bridge company would lengthen petitioner's line about 1,300 or 1,400 feet and consequently increase the expense. Its approach to the connection at the end of the bridge is on a tangent, while its approach to the connection suggested by the bridge company is on a curve. The grade of its tracks approaching the connection at the end of the bridge would be three-tenths of one per cent, thus agreeing with the maximum grade on its entire line, while the grade on the bridge company's track from the point of connection suggested by respondents to the east end of the concrete viaduct is five-tenths of one per cent.

If we were permitted to view the question from the petitioner's standpoint alone, we would have no hesitancy in saying that the proper place to make the connection is the one it has selected.

The statute, however, requires that the connection be made "at such point and in such manner as will not unnecessarily impede or endanger the travel or transportation upon the railway so crossed," and it is therefore our duty to view the situation from an impartial standpoint and prescribe a place and manner of connection as favorable to the petitioner as can be selected, but still one which will not unnecessarily impede or endanger travel or transportation on the bridge company's tracks.

From our view of the premises and the evidence offered at the hearing we are of the opinion that it would be a very dangerous thing to permit this connection to be made right at the mouth of the bridge. In the first place it would congest traffic at this point and thus make it much more difficult for the bridge company to lay additional tracks on the approach, to take care of increased business. Then, again, the evidence shows that there are from thirty to forty regular trains operated over the bridge daily at the present time and well founded reasons are suggested why a very material increase may reasonably be expected in the near future. It can hardly be claimed that the large amount of traffic now passing over this bridge should be seriously interfered with, in order that the petitioner with its twenty-five miles of main line may, with less expense and more conveniently transact its business.

But aside from other objections that have been urged, we are firmly convinced that to permit the connection at the place proposed by petitioner would "unnecessarily endanger the travel or transportation" over the bridge company's tracks. Believing this to be true, our duty is plain. We can not balance the additional expense and inconvenience to petitioner against the loss of life or limb.

It is therefore ordered and decided that petitioner, the Cairo and Thebes Railroad Company, have leave to intersect, join and unite at grade its tracks with the tracks of the Southern Illinois and Missouri Bridge Company at a point about 4,000 feet northeast of the east end of the bridge across the Mississippi river at Thebes with another connection at a point about 1,500 feet northeast of the point last mentioned, both of which points are more particularly shown and described on a plat offered in evidence in this cause and marked "Defendant's Exhibit A," the right of way for such connections being first obtained as provided by law.

It is further ordered and decided that such connections be protected by a proper and adequate interlocking device to be installed and maintained by and at the expense of the Cairo and Thebes Railroad Company; that the Cairo and Thebes Railroad Company cause to be prepared and presented to this commission without unnecessary delay complete and detailed plans and specifications of the interlocking plant proposed to be installed for the approval of this commission. This cause will be taken under advisement and a final order entered upon presentation of plans and specifications for

such interlocking plant and the approval of the same, at which time the division of the expense of the operation of such plant will be determined by the commission, unless the parties in interest shall have agreed upon such division.

Dated this 17th day of October, A. D. 1907.

W. H. BOYS, *Chairman*,
B. A. ECKHART, *Commissioner*,
J. A. WILLOUGHBY, *Commissioner*.

Chaffin Coal Company,

vs.

Michigan Central R. R. Co.
and Chicago, Rock Island & Pacific Ry. Co.

Complaint of Excessive Switching Charges in Chicago.

Petition filed March 26, 1907.

May 9, 1907. Case set for hearing at the office of the commission in Chicago.

May 9, 1907. Case dismissed by agreement of all parties concerned.

L. L. Emmerson and others,

vs.

Chicago, Burlington & Quincy R. R. Co.

Petition for Depot and Side Track Facilities at Emmersonville, Ill.

Petition filed March 29, 1907.

July 11, 1907. Case heard before the commission.

August 6, 1907. Notice received that the case had been settled by agreement and case dismissed.

W. A. Challacombe,

vs.

Chicago, Peoria & St. Louis Ry. Co., of Illinois.

Complaint of Removal of Station and Side Track, Challacombe, Ill.

Petition filed April 5, 1907.

Johnson Transfer and Fuel Co., Bloomington, Ill.,

vs.

Lake Erie & Western R. R. Co.

Complaint of Excessive Switching Charge.

Petition filed May 6, 1907.

June 4, 1907. Case on call for hearing; complainant not represented. Case dismissed.

Henry I. Green, Urbana, Ill.,
vs.
Baltimore & Ohio Southwestern R. R. Co.

Complaint of Excessive Charge on L. C. L. Shipment of Lime Stone Dust.

June 4, 1907, case heard and charge found correct under present classification. Classification changed to cover lime stone dust, car loads and less. Case dismissed.

Southern Illinois Milling and Elevator Co., Murphysboro, Ill.,
vs.
Illinois Central Railroad Company.

Complaint of Excessive Charge for Switching at Murphysboro, Ill.

Petition filed May 15, 1907.
June 4, 1907, case heard by commission.
August 6, 1907, findings of the commission entered of record as follows:

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

Southern Illinois Milling and Elevator Co.,
vs.
Illinois Central Railroad Company.

Overcharge for Switching.

APPEARANCES:

McELVAIN & GLENN, for Petitioners.
JOHN G. DRENNAN, for Respondent.

It is alleged in the petition filed in this case that the petitioner owns and operates a mill and elevator at Murphysboro, Ill.; that it is located within one hundred feet of the station of the respondent and upon one of its side tracks; that on or about January 24, 1907, the respondent company, having transported a certain car loaded with coal from the Harrison mine to the mill and elevator of the petitioner, demanded and charged for this service the sum of $7.50; that the mill and elevator of petitioner and the Harrison mine are both within the yard limits of the respondent company at Murphysboro, and that the transportation of the car in question was performed by a switch engine.

It is further alleged that on January 16, 1907, the respondent company charged the petitioner $7.50 for switching a car of coal from another mine known as Mine Number Six to the mill and elevator of the respondent at Murphysboro, and that said Mine Number Six is within the yard limits of the respondent at Murphysboro.

It is further alleged that both of these mines are located within three miles of the petitioner's mill and elevator.

None of the facts stated in the petition are denied in the answer filed by the respondent, but it is contended that the service performed in moving these two cars was not a switching service, but were regular hauls of freight for which the respondent had the right to charge the rates authorized by the regular distance tariff.

The evidence in the case fully sustains the allegations made in the petition, and it was further shown that for the past two or three years the respondent company had charged the petitioner for switching cars from those two mines $7.50 per car. The charges thus made were paid by the petitioner under protest, and only after the respondent threatened to refuse to perform the service at all.

In the case of Weber vs. Illinois Central Railroad Company, decided December 4, 1906, we had occasion to examine the rule relating to switching, known as Rule Number 23, and there held, on facts similar to those presented in

the case under consideration, that Rule Number 23 applied and that the respondent in that case, in charging a sum in excess of $4.00 per car, was guilty of a violation of such rule.

We have carefully reconsidered the grounds for that decision and have arrived at the conclusion that the decision, on the facts presented, was right.

It is unnecessary to again repeat the reasons which influenced us in arriving at the conclusion there announced, and as the facts in this case bring it squarely within the Weber case, we are of opinion that the respondent, in charging more than $4.00 per car for the service performed, as set forth in the petition, was and is guilty of extortion.

(Signed) W. H. Boys, *Chairman.*
B. A. Eckhart, *Commissioner.*
J. A. Willoughby, *Commissioner.*

Dated this 6th day of August, 1907.

Citizens of Oregon, Ill.,

vs.

Chicago & Northwestern Ry. Co. and
Chicago, Burlington & Quincy Ry. Co.

Petition for "Y" Connection at Rochelle, Ill.

Petition filed May 20, 1907.
August 6, 1907, matter settled by agreement, respondent companies agreeing to make the connection and case dismissed.

Frank M. Annis, Aurora, Ill.

vs.

Illinois, Iowa & Minnesota Ry. Co.

Complaint of Insufficient Passenger Service.

Petition filed June 24, 1907.
December 5, 1907, case heard by the commission and taken under advisement.

Peoria, Lincoln & Springfield Traction Co.,

vs.

Chicago & Alton Ry. Co.

Petition to Fix Place and Manner of Crossing Near Minier, Ill.

Petition filed June 28, 1907.
July 10, 1907, place of proposed crossing viewed by commission.
August 6, 1907, case heard by the commission.
August 8, 1907, order of the commission entered of record as follows:

Before the Railroad and Warehouse Commission of the State of Illinois.

Peoria, Lincoln & Springfield Traction Co.,

vs.

Chicago & Alton Railroad Co.

Petition to cross the tracks of the Chicago & Alton Railroad Company between Minier and Hopedale, Ill.

In the above entitled cause the following order is entered by agreement:

1. Permission is hereby given the Peoria, Lincoln & Springfield Traction Company to cross the right of way and over the main track of the Chicago

& Alton Railroad Company at the place mentioned in the petition filed in the above entitled cause.

2. The tracks of the Chicago & Alton Railroad Company shall remain at the present grade and the tracks of the Peoria, Lincoln and Springfield Traction Company shall be carried over the same by means of a timber trestle so as to give a clear head room between the top of the rails of the said Chicago & Alton Railroad Company and the lowest part of the superstructure of the timber trestle of the Peoria, Lincoln & Springfield Traction Company of not less than twenty-two (22) feet and no part of said structure shall be within nine (9) feet and two (2) inches of the center line of the main track of said Chicago & Alton Railroad Company as the same is now laid.

3. The bridge or trestle carrying the tracks of the Peoria, Lincoln & Springfield Traction Company shall be of standard railroad construction, of sufficient strength to safely carry the trains and cars of said Peoria, Lincoln & Springfield Traction Company. The work of construction thereof shall be done so as not to interfere with the operation of trains and cars over the tracks of the said Chicago & Alton Railroad Company.

4. The gradient of the approaches to the said trestle shall be two and a half (2½) feet in each one hundred (100) feet and the grade shall be constructed of earth with the exception of one hundred and twenty-four (124) feet of trestle, spanning the right of way of said Chicago & Alton Railroad Company. The average width of the roadway on said earth approaches shall be eighteen (18) feet, with a slope of one and a half to one (1½ to 1).

5. The said trestle shall be constructed in a good and substantial manner and in accordance with the plan thereof herewith filed and to the satisfaction of the Board of Railroad and Warehouse Commissioners of the State of Illinois.

6. The said Peoria, Lincoln & Springfield Traction Company shall maintain the said timber trestle and approaches in good condition and repair at its own sole cost and expense.

7. In the event said Chicago & Alton Railroad Company shall desire to construct additional tracks upon its right of way where the same is crossed by the timber trestle of said Peoria, Lincoln & Springfield Traction Company, the said Peoria, Lincoln & Springfield Traction Company shall rearrange the said trestle so as to permit the construction of such additional tracks, providing for such additional tracks the same clearance and head room as in the original track shall be provided, and the division of the cost thereof shall be determined by the commission when such additional tracks are constructed.

8. The cost of the overhead crossing of the tracks of the Chicago & Alton Railroad Company by the tracks of the Peoria, Lincoln & Springfield Traction Company shall be borne as hereinafter determined by the commission.

9. The work hereinabove contemplated shall be fully and finally completed on or before January 1, 1908.

10. This cause is continued to the September meeting, 1907.

(Signed) W. H. Hoys, *Chairman.*

Agreed to:
L. E. Fisher, for Traction Company.
James Miles, for C. & A. R. R. Co.
Filed August 8, 1907.

Before the Railroad and Warehouse Commission of the State of Illinois.

Peoria, Lincoln & Springfield Traction Co.,

vs.

Chicago & Alton Railroad Co.

Supplemental Order.

On the 8th day of August, A. D. 1907, an order was entered in this cause authorizing the petitioner to cross with its proposed line of railway by

means of an overhead crossing the railway of the respondent company at the point mentioned in the petition filed herein.

The only question to be determined at this time is whether or not the respondent company shall be required to pay any part of the cost of separating the grades at this point, and if so, the proportion it shall be required to bear.

We have carefully considered the suggestions of counsel concerning the division of expense of separating the grades at this point and have arrived at the conclusion that in all ordinary cases it is only fair and equitable that the senior road should bear one-third of such expense.

It is therefore ordered and decided that the expense of the separation of grades at the proposed crossing shall be borne and paid by the railroads interested in the following proportion, to-wit:

The petitioner shall pay two-thirds of the expense of separating said grades and the respondent shall pay one-third of such expense.

Dated this 3d day of December, A. D. 1907.

W. H. Boys, *Chairman.*
B. A. Eckhart, *Commissioner.*
J. A. Willoughby, *Commissioner.*

Peoria, Lincoln & Springfield Traction Co.,
vs.
Cleveland, Cincinnati, Chicago & St. Louis Ry. Co.

Petition to Fix Place and Manner of Crossing over Peoria & Eastern Ry. Division of Above Railway near Mackinaw.

Petition filed June 28, 1907.
July 10, 1907, place of proposed crossing viewed by commission.
August 6, 1907, case heard by commission.
August 10, 1907, order of the commission entered of record as follows:

Before the Railroad and Warehouse Commission of the State of Illinois.

At their August meeting, A. D. 1907.

Commissioners:
Hon. Wm. H. Boys, Chairman,
Hon. J. A. Willoughby,
Hon. B. A. Eckhart.

In the matter of the Peoria, Lincoln & Springfield Traction Company vs. Cleveland, Cincinnati, Chicago & St. Louis Railway Company and Peoria & Eastern Railway Company.

Petition for Crossing.

Now, on this day said cause coming on for hearing before said Board of Railroad and Warehouse Commissioners; the petitioner appearing by H. J. Hamlin and George B. Gillespie, its attorneys; respondent appearing by George C. Ryder, its attorney; and said commissioners having heretofore viewed the place for proposed crossing and having heard the evidence submitted by the petitioner and respondent, it is considered and ordered that the petitioner, Peoria, Lincoln & Springfield Traction Company, may, with its proposed line of railway cross under the railway of the Cleveland, Cincinnati, Chicago & St. Louis Railway Company and the Peoria & Eastern Railway Company at the point described in the petition filed herein, to-wit: At a point near the section line between sections 18 and 19, township 23,

range 2 west of the second P. M., in the county of Tazewell, State of Illinois, as located by the engineers of the petitioner; which location is shown as indicated by certain stakes, marks and monuments located by the engineers of said petitioner along the location line of its proposed railway.

It is further ordered that there shall be a clearance of sixteen feet between the top of the rails of petitioner's road and a roof or support, which shall be constructed over the same to support the railway of the Cleveland, Cincinnati, Chicago & St. Louis Railway Company and the Peoria & Eastern Railway Company, and that the subway under said railway through which the railway of the petitioner is to pass shall be of the width of eighteen feet.

It is further ordered that the petitioner, at or before the next meeting of this board, shall file with its secretary full and complete estimates and specifications of the cost, manner of crossing and of the structures to be used in constructing said subway crossing and approaches.

And it is further ordered that this cause stand continued until the next regular meeting of this board.

Filed August 10, 1907.

(Signed) W. H. Boys, *Chairman.*

Before the Railroad and Warehouse Commission of the State of Illinois.

Peoria, Lincoln & Springfield Traction Co.,

vs.

Cleveland, Cincinnati, Chicago & St. Louis Railway Company, and Peoria & Eastern Railway Company.

Supplemental Order.

On the 10th day of August, 1907, an order was entered in this cause authorizing the petitioner to cross with its proposed line of railway by means of a subway, the railway of the respondent companies, at the point mentioned in the petition filed herein, and it was ordered that the petitioner file with the secretary of this commission full and complete estimates and specifications of the cost, manner of crossing and of the structures to be used in constructing the said subway crossing and approaches.

Such estimates and specifications have been filed with the secretary as provided in said order, and have been examined by the commission, and the specifications showing the manner of crossing, and the structures to be used in constructing said subway and approaches are hereby approved.

It further appearing that the parties interested in said crossing have agreed upon the division of expense of constructing said subway, no order or decision of the commission is necessary in regard thereto.

Dated this 3d day of December, A. D. 1907.

W. H. Boys, *Chairman.*
B. A. Eckhart, *Commissioner.*
J. A. Willoughby, *Commissioner.*

Peoria, Lincoln & Springfield Traction Co.,

vs.

Vandalia Railroad Co.

Petition to Fix Place and Manner of Crossing Near Mackinaw, Ill.

Petition filed June 28, 1907.

July 10, 1907, place of proposed crossing viewed by commission.

August 6, 1907, case heard by the commission.
August 12, 1907, order of the commission entered of record as follows:

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

At the August meeting, A. D. 1907.

Present: Hon. Wm. H. Boys, Chairman; Hon. J. A. Willoughby, Hon. B. A. Eckhart, Commissioners.

In the matter of Peoria, Lincoln & Springfield Traction Co.
vs.
Vandalia Railroad Co.

Petition for Crossing.

Now, on this day said cause coming on for hearing before said Board of Railroad and Warehouse Commissioners; the petitioner appearing by H. J. Hamlin and George B. Gillespie, its attorneys; respondent appearing by W. C. Outten, its attorney, and said commissioners having heretofore viewed the place for proposed crossing and having heard the evidence submitted by the petitioner and respondent, it is considered and ordered that the petitioner, Peoria, Lincoln & Springfield Traction Company, may, with its proposed line of railway, cross under the railway of the Vandalia Railroad Company at the point described in the petition filed herein, to-wit: On section 18, township 23, range 2 W. of the 3d P. M., in the county of Tazewell, State of Illinois, as the said line of the petitioner is located, which location line is indicated by engineer's marks, stakes and monuments along the location line of its proposed railway.

It is further ordered that there shall be a clearance of sixteen feet between the top of the rails of petitioner's road and a roof or support, which shall be constructed over the same to support the railway of the Vandalia Railroad Company and that the subway under said railway through which the railway of the petitioner is to pass shall be of the width of eighteen feet.

It is further ordered that if the Vandalia Railroad Company shall hereafter construct an additional spur or track to its gravel pits as indicated by the plat filed herein, that the petitioner shall permit the construction of such temporary wooden trestle overhead crossing, as shall be deemed necessary. This order, however, does not determine the question as to whether the cost of constructing such trestle work overhead shall be borne by the petitioner or by the Vandalia Railroad Company, but that question is left open for the future determination of this board.

It is further ordered that the petitioner at or before the next meeting of this board shall file with its secretary full and complete estimates and specifications of the cost, manner of crossing and of the structure to be used in constructing said subway crossing and approaches.

It is further ordered that this cause stand continued until the next regular meeting of this board.

(Signed) W. H. BOYS, *Chairman.*

Dated at Springfield, Ill., August 12, 1907.

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

Peoria, Lincoln & Springfield Traction Co.,
vs.
Vandalia Railroad Co.

On the 12th day of August, 1907, an order was entered in this cause authorizing the petitioner to cross with its proposed line of railway, by means of a subway, under the railway of the respondent company, at a point on section eighteen (18), township twenty-three (23), range two (2) west of the third

principal meridian, in the county of Tazewell in the State of Illinois. By this order the petitioner was required to file with the secretary of the commission full and complete estimates and specifications of the cost, manner of crossing and of the structures to be used in constructing said subway crossings and approaches.

Such plans and specifications have been filed with the secretary and examined by the commission and they are hereby approved. The only question to be determined at this time is whether or not the respondent company shall be required to pay any part of the cost of separating the grades at this point, and if so the proportion it shall be required to bear.

Section 2 of an Act entitled, "An Act in relation to the crossing of one railroad by another and to prevent danger to life and property from grade crossings," as amended and in force July 1, 1907, provides, in part, as follows:

"If a separation of grades is required at such crossing, then such commission shall decide and include in the order authorizing such crossing the proportion of the expense thereof to be paid by the railroads interested in said crossing respectively but not more than one-third of such expense shall be charged against the senior road. Interurban electric railroads and street railroads are hereby declared to be railroads and within the meaning of this Act."

We have carefully considered the suggestions of counsel concerning the division of expense of separating the grades at this point, and have arrived at the conclusion that in all ordinary cases it is only fair and equitable that the senior road should bear one-third of such expense.

It is therefore ordered and decided that the expense of the separation of grades at the proposed crossing shall be borne and paid by the railroads interested in the following proportions, to-wit:

The petitioner shall pay two-thirds of the expense of separating said grades and the respondent shall pay one-third of such expense.

In the former order in this cause, it was provided that if the respondent company should hereafter construct an additional spur track to its gravel pits, as indicated by the plat filed in said cause, that the petitioner should permit the construction of such temporary wooden trestle overhead crossing as should be deemed necessary, but whether the cost of constructing such trestle work should be borne by the petitioner or by the respondent was reserved for the future determination of the board.

The respondent has not indicated to the commission that it will be necessary, or that it intends to construct said overhead trestle, and consequently, it is not now necessary to decide that question, but if at any time in the future the respondent road decides to construct said overhead trestle work it shall have the right to apply to the commission to determine whether or not the expense thereof shall be borne by the petitioner or by the respondent, or if by both, the proportion to be borne by each.

Dated this 20th day of November, A. D. 1907.

(Signed) W. H. Boys, *Chairman.*
B. A. Eckhart, *Commissioner.*
J. A. Willoughby, *Commissioner.*

Michael C. Hayes,
vs.
Chicago & Northwestern Ry. Co.

Complaint of Extortion and Unjust Discrimination in the Charges for Switching in Chicago.

Petition filed July 11, 1907.

August 8th, 1907, case heard before the commission and continued to September 5, 1907.

September 5, 1907, case continued to October 19, 1907.

October 19, 1907, case concluded before the commission and taken under advisement.

Galesville Grain and Coal Co.
vs.
The Wabash Railroad Company.

Discrimination in the Distribution of Cars for Loading Grain.

Petition filed July 12, 1907.
August 6, 1907, case heard before the commission.
December 3, 1907, opinion and findings of the commission filed of record as follows:

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

Galesville Grain and Coal Company,
vs.
Wabash Railroad Company.

APPEARANCES:

MR. F. M. SHONKWILER AND MR. JAMES HICKS, for petitioner.
MR. N. S. BROWN, for Respondent.

Discrimination in Distribution of Cars.

It is alleged in the complaint filed in this cause, that the petitioner is a corporation engaged in buying and shipping grain at the unincorporated town of Galesville, in the county of Piatt; that for more than a year last past there have been three grain elevators in use at said town of Galesville, all of which are located upon the right of way of respondent, the Wabash Railroad Company; that complainant owns and operates an elevator of about 40,000 bushels capacity, and that Patrick H. Hayes and John Hayes have leased, and since the first of January, 1907, have operated the other two elevators located at Galesville, one of them having a capacity of about 5,000 bushels and the other having a capacity of from 10,000 to 12,000 bushels; that Patrick H. Hayes and John Hayes are doing business under the firm name and style of Hayes Brothers, and that they are in truth and in fact a single firm; that in the distribution of grain cars among the dealers along the line of its road the respondent has adopted a rule requiring their agents to distribute the cars equally between the different firms at each station, regardless of the number of elevators operated by each firm, or the capacity of the same; that in the distribution of grain cars the agent of the respondent at Galesville persists in treating the firm of Hayes Brothers as two separate and distinct firms, and consequently gives to them twice as many cars as are given to complainant, and that in thus dividing the grain cars available for the shipment of grain from said station the respondent has unlawfully discriminated against the complainant.

The evidence in the case shows beyond a shadow of a doubt that Patrick H. Hayes and John Hayes prior to the hearing, were doing business under the firm name and style of Hayes Brothers; that one of the partners kept the books of the concern and attended to the weighing of grain, while the other attended to the outside work; that all grain was paid for by checks signed by Hayes Brothers and drawn on the First National Bank of Monticello, Illinois, where an account was kept in the name of Hayes Brothers; that no effort was made by the members of the firm to conceal from any of their customers the fact that they were, prior to the hearing in this case, doing business as a single firm, under the name of Hayes Brothers.

It is also disclosed by the evidence that in their dealings with the agent of the respondent at Galesville, each of the brothers placed orders for cars in their individual names, and that all shipments made over the respondent's road were in the name of one or the other of the brothers, and that they represented to such agent that each of them was doing business on his in-

dividual account, and consequently claimed that each of them was entitled to his pro rata share of the grain cars available for shipping grain from said station.

The agent of the defendant at Galesville testified that both Patrick H. Hayes and John Hayes had represented to him that they were not doing business as a firm, but that each of them was doing business on his individual account and that consequently, he had in accordance with the rules of the respondent regulating the distribution of grain cars, given to Patrick H. Hayes one-third of all grain cars received, to John Hayes one-third of such cars and to the complainant one-third of such cars.

We are impressed with the idea that if the agent of the respondent was deceived by these misrepresentations of Hayes Brothers, he was the only person, so far as the evidence discloses, who was misled by their statements, and we are inclined to the belief that the agent of the respondent wilfully discriminated against the complainant in the distribution of cars, because we are unable to find from the evidence offered at the hearing that there was or is the slightest excuse for the agent not knowing the exact condition of affairs.

After the filing of the complaint in this cause the Hayes Brothers went through the outward form of dissolving the partnership theretofore existing, but the evidence as to the *bona fides* of this pretended dissolution was such as to leave clearly upon our minds the impression that it was a dissolution in form only and not in fact.

It is contended by counsel for respondent that this commission has no jurisdiction over the subject matter of this complaint, and that the same ought to be dismissed. It is not necessary in this case to decide whether or not the commission has power to prescribe a rule for the distribution of cars and compel the observance of that rule by the railroad companies, and in this case we do not wish to be understood as either approving or disapproving of the rule adopted by the respondent. For the purpose of this case we assume that the rule which it has adopted is a reasonable and fair one. We think that it is within the power of this commission to inquire into complaints charging a discrimination, either in rates or the distribution of cars, or any other matters where the rights and interests of shippers are involved. As we have above said, for the purposes of this case we assume that the rule adopted by the respondent company is a just and fair one, but it is the duty of the company to carry out that rule in good faith and to treat all of its patrons justly and fairly where they are doing business under the same conditions.

It was shown upon the hearing of this cause that from January to July, 1907, both inclusive, the respondent furnished to the complainant a total of eighty-three (83) cars; that it furnished during the same period to Patrick H. Hayes thirty (30) cars and to John Hayes nineteen (19) cars, making a total of forty-nine (49) cars furnished to Hayes Brothers, and it is claimed, that even though the commission has jurisdiction of the subject matter, the evidence utterly fails to show any discrimination against the complainant.

It was also shown at the hearing that the complainant did a larger business than the Hayes Brothers and that during the period named took all of the cars it could obtain from the agent of the respondent; that during such period, or a portion thereof, Patrick H. Hayes did not order any cars at all, and the same is true of John Hayes. The mere fact that during the seven months from January to July, inclusive, the complainant was furnished a larger number of cars than was furnished to Patrick H. Hayes and John Hayes jointly, does not, under the circumstances disclosed, show that the complainant was not discriminated against. The testimony of the agent of the respondent was that when the three parties named wanted cars at the same time the cars were distributed equally between them, and in this distribution of cars we think the complainant was treated unfairly.

It will not do to say unqualifiedly that the agent of the respondent at Galesville had a right to assume that the statements of Patrick H. Hayes and John Hayes to him were true. It may be that he was justified in assuming their statements to be correct until he was made aware that they were

contrary to the facts. Complaints were repeatedly made to he agent on account of his method of distributing cars, and he was repeatedly told that Patrick H. Hayes and John Hayes constituted a single firm. The outward evidences of the truth of this statement were so apparent that only the grossest negligence or unfairness on the part of the agent could leave him in ignorance of the real facts.

It is our opinion that the complainant fully and clearly established the charges made in its complant and that the respondent has been guilty of wilful discrimination against the complainant in the distribution of grain cars.

Dated this 3rd day of December, A. D. 1907.

W. H. Boys, *Chairman.*
B. A. Eckhart, *Commissioner.*
J. A. Willoughby, *Commissioner.*

Village of Mt. Olive, Ill.
vs.
Illinois Central R. R. Co.

Complaint of Excessive Charge for Switching.

Petition filed July 20, 1907.
August 6, 1907, case heard before commission.
October 17, 1907, opinion and findings of the commission filed of record as follows:

Before the Railroad and Warehouse Commission of the State of Illinois.

Village of Mt. Olive.
vs.
Illinois Central Railroad Company.

Overcharge for Switching.

APPEARANCES:

Collie Clavin, for Petitioner.
John G. Drennan, for Respondent.

The facts in this case are not disputed and are as follows: The village of Mt. Olive operates an electric light plant located adjacent to a switch track of the respondent at Mt. Olive. Some time prior to August 1, 1907, the village of Mt. Olive ordered a carload of coal from the Consolidated Coal Company whose mine is located on the line of the Wabash Railroad Company. The coal was loaded in a Wabash car and delivered by the Wabash Railroad Company to the Illinois Central Railroad Company at its junction with the latter road in Mt. Olive. The distance from the junction of the two roads to the electric light plant of the petitioner is 3,360 feet. In the regular course of business the car was taken from the junction by the Illinois Central Railroad Company and delivered to the petitioner on a sidetrack adjacent to petitioner's plant. For this service the respondent charged and collected the sum of $11.04, being 23 cents per ton for 48 tons.

The petitioner claims that this service was a switching service and governed by Rule 23 Illinois Commissioners' Classification No. 10, and therefore the respondent was and is guilty of extortion in charging and collecting a sum largely in excess of the maximum charge fixed or allowed by such rule.

We are of the opinion that the service performed by the respondent was a switching service and clearly within Rule 23 above referred to, and that in

charging more than $4.00 for the services in question, the respondent was and is guilty of extortion.

Dated at Springfield, Illinois, this 17th day of October, A. D. 1907.

W. H. Boys, *Chairman.*
B. A. Eckhart, *Commissioner.*
J. A. Willoughby, *Commissioner.*

Kensington and Eastern Railroad Company,

vs.

Pittsburg, Ft. Wayne and Chicago Ry. Co.
Chicago and State Line Ry. Co.
The New York, Chicago and St. Louis R. R. Co.
South Chicago and Southern R. R. Co.
Pennsylvania Company.
Chicago and Western Indiana R. R.Co.
Chicago and Erie R. R. Co.
Erie R. R. Co.
Chicago, Indianapolis & Louisville R. R. Co.
The Wabash R. R. Co. and
Elgin, Joliet and Eastern Ry. Co.

Petition for Grade Crossing at Burnham, Illinois.

Petition filed July 23, 1907.
August 27, 1907, commission viewed place of proposed crossing.
Sept. 5 and 6, 1907, case heard before the commission.
Oct. 30, 1907, order of the commission filed of record as follows:

Before the Railroad and Warehouse Commission of the State of Illinois.

Kensington & Eastern Railroad Company,

vs.

Pittsburg, Ft. Wayne & Chicago Ry.,
Chicago & State Line Ry. Co.,
The New York, Chicago & St. Louis R. R. Co.,
South Chicago & Southern R. R. Co.,
Pennsylvania Company,
Chicago & Western Indiana R. R. Co.,
Chicago & Erie R. R. Co.,
Erie R. R. Co.,
Chicago, Indianapolis & Louisville R. R. Co.,
The Wabash Railroad Company and
Elgin, Joliet and Eastern Ry. Co.

Petition to Cross at Grade.

APPEARANCES:

John G. Drennan, for Petitioner.
Wm. J. Henley, Wells H. Blodgett,
Geo. W. Kretzinger, Robert J. Cary,
W. O. Johnson, Loesch, Scofield & Loesch, for Respondent.

The amended petition in this case was filed August 6, 1907, by the Kensington and Eastern Railroad Company against the Pittsburg, Ft. Wayne & Chicago Railway Company, Chicago & State Line Railway Company, The New York, Chicago & St. Louis Railroad Company, South Chicago & Southern Railroad Company, Pennsylvania Company, Chicago & Western Indiana Railroad Company, Chicago & Erie Railroad Company, Erie Railroad Company, Chicago, Indianapolis and Louisville Railroad Company, the Wabash

Railroad Company and the Elgin, Joliet and Eastern Railway Company. Answers were filed by the several respondents prior to the 5th day of September, 1907, at which time the cause was heard by the commission, the place of the proposed crossing having been viewed by the commission on August 28, 1907.

The Kensington and Eastern Railroad Company is a corporation duly organized under the general laws of the State of Illinois relating to the incorporation of railroads, and has laid out and located its road from Kensington, Cook county, Illinois, a station on the line of the Illinois Central Railroad Company, in a southeasterly direction to the Indiana state line, near the city of Hammond, Indiana. At or near Burnham, Illinois, the proposed railroad of petitioner, as the same is laid out will cross the main line of the Chicago and Western Indiana R. R. Co., the main line of the New York, Chicago and St. Louis R. R. Co., and the main line of the South Chicago and Southern R. R. Co. At the point of proposed crossing the Chicago & Western Indiana R. R. Co. owns and operates a double track railroad running in a northwesterly and southeasterly direction, and the New York, Chicago & St. Louis R. R. Co. owns and operates a double track railroad, which parallels the Chicago & Western Indiana Company's tracks. At this point the four main tracks last above mentioned are crossed by the single track main line of the South Chicago and Southern Railroad Company, running in a northerly and southerly direction, which crossing is now protected by an interlocker.

The petitioner proposes to cross the main tracks of these railroads, with a double track main line, at grade, at the point where the three roads named, intersect.

All of the other respondents, (except the Pittsburg, Ft. Wayne and Chicago Railway Company, which disclaims any interest in any of the tracks to be crossed), are either tenants of or are otherwise interested in some one of the three repsondents above mentioned.

It is insisted by the respondents, that to permit a grade crossing at the point selected by the petitioner will "unnecessarily impede or endanger the travel or transportation upon" the railways so to be crossed, and therefore, if a crossing is permitted at that point, or at any other point designated by the commission, that the petitioner should be required to construct an overhead crossing.

The evidence submitted at the hearing shows that one of the two tracks which the petitioner proposes to construct, is to be used by the Chicago, Lake Shore and South Bend Railway Company, an electric line that is to be operated between South Bend, Indiana, and Chicago. The other track is to be used by the petitioner and also by the C. C. & L. R. R. Co., and operated as a steam railroad.

It further appears from the evidence that from July 7, 1907, to July 15, 1907, both inclusive, the petitioner took observations of the number of trains that actually passed over the place of the proposed crossing each 24 hours, the average number per day being 151. The petitioner also estimates that when its road is completed and in operation, it and its tenants will operate an average of 51 trains over the crossing, making a total of 202 train movements over the proposed crossing each day.

The first question to be determined is whether or not the petitioner should be permitted to construct a grade crossing at the point selected by it.

We have had occasion in a number of cases recently decided to express our views on the subject of grade crossings and it is hardly necessary to here repeat what we have heretofore said on this subject. All are agreed that there is an element of danger in grade crossings which it is impossible to entirely overcome.

From the evidence it appears that no less than five or six trunk lines enter the city of Chicago over the tracks of the Chicago & Western Indiana Company. A very large number of passenger trains are operated by these trunk lines. Of the 51 trains, (including electric cars or trains), which the petitioner proposes to operate over this crossing, 43 will carry passengers.

With these facts before us we have no hesitancy in saying that the petitioner's request for a grade crossing should be denied.

The next question to be determined is whether or not the petitioner should be permitted to construct an overhead crossing at the point selected by it. As before stated, the South Chicago road now crosses the Western Indiana and Nickle Plate roads at this point, and if the petitioner is allowed to construct an overhead crossing over the three roads named, it will be next to impossible to separate the grades of the South Chicago road and the Western Indiana and Nickel Plate roads at any time in the future.

It was suggested by several of the engineers who were examined as witnesses, that the difficulties involved would be obviated by requiring the petitioner to cross by an overhead crossing, the tracks of the Chicago & Western Indiana Company and the New York, Chicago and St. Louis Company, at a point 6,400 feet northwest of the point selected by it, and to cross the single track main line of the South Chicago and Southern Railroad Company at grade, at or near the point where this track is now crossed at grade by the Chicago & Western Indiana and New York, Chicago & St. Louis Companies.

It seems to us that this arrangement has a number of advantages over any other plan that has been suggested.

In the first place, the trains operated by the South Chicago and Southern are comparatively few in number, averaging but 16 per day, and consequently the same objection does not exist to crossing this road at grade that does to crossing the Chicago & Western Indiana and the New York, Chicago and St. Louis. Again, the present grade crossing is protected by an interlocker and such interlocking plant, could, with very little expense, be extended so as to include the crossing of petitioner's tracks. This arrangement would make it entirely practicable and feasible, should the increase of traffic on the several lines require it, to separate the grade of the track of the South Chicago and Southern from the grade of the tracks of the Chicago & Western Indiana, the New York, Chicago & St. Louis and the Kensington & Eastern.

The most serious objection to this plan of crossing, is the increased expense to the Kensington and Eastern, by reason of the fact that the right of way along the north side of the Western Indiana and Nickel Plate tracks from the point 6,400 feet northwest of Burnham to the South Chicago and Southern crossing would probably cost more money than a right of way along the south side of those tracks between the points named.

There is no doubt that the expense of this crossing to the Kensington & Eastern Company will be very large, but whether or not the expense of constructing the crossing in the manner above indicated, would exceed the expense of an overhead crossing at the point selected by the petitioner, we are unable to determine from the estimates of the engineers, offered in evidence. At any rate, all of the circumstances considered, we are of the opinion that the plan last suggested is the proper one, and should be adopted.

One additional question remains to be determined. Section 2, of an Act entitled, "An Act in relation to the crossing of one railway by another, and to prevent danger to life and property from grade crossings," is, in part, as follows:

"If a separation of grades is required at such crossing, then such commission shall decide and include in the order authorizing such crossing, the proportion of the expense thereof to be paid by the railroads interested in said crossing, respectively, but not more than one-third of such expense shall be charged against the senior road."

The question is, what proportion of the expense of separating the grade of petitioners' tracks from the grade of the tracks of the Chicago & Western Indiana and the New York, Chicago & St. Louis Companies should equitably be borne by the two last named roads?

There can be no question as to the right of petitioner to cross with its tracks, the tracks of the Chicago & Western Indiana and New York, Chicago & St. Louis Companies. The statute under which it was organized expressly confers upon it this right. The benefits that will accrue to the senior roads, by reason of this crossing being made by an overhead structure rather than at grade, are many, and must be apparent to everyone. There will be no

possibility of a collision between trains of the different companies, and therefore the liability to damages on account of injuries to persons and property is obviated. None of the troublesome delays incident to a grade crossing will be encountered, and the continuing expense of the operation of an interlocking plant, a portion of which the senior road is usually required to pay, will be avoided.

All things considered, we are inclined to agree with the suggestion of counsel for petitioner, that the senior roads should be required to pay one-third of the expense of separating the grades in question.

It is therefore ordered and decided that the petitioner, the Kensington and Eastern Railroad Company be, and it is hereby authorized to cross with its tracks the main tracks of the Chicago and Western Indiana Railroad Compny and the main tracks of the New York, Chicago and St. Louis Railroad Company (the right of way for such crossing being first obtained in the manner required by law) at a point about 6,400 feet northwest of the proposed point of crossing as described in the petition filed herein; that such crossing shall be made by a substantial overhead structure, the lowest part of which shall be twenty-two (22) feet above the top of the rails of the Chicago and Western Indiana Railroad and the New York, Chicago and St. Louis Railroad, and that the expense of separating the grades at said crossing shall be paid by the railroads interested, in the following proportions: Two-thirds of such expense shall be paid by the petitioner, the Kensington and Eastern Railroad Company, and one-third of such expense shall be paid by the Chicago and Western Indiana Railroad Company and the New York, Chicago and St. Louis Railroad Company.

It is further ordered and decided that the petitioner, the Kensington and Eastern Railroad Company be and it is hereby authorized to cross with its tracks the main track of the South Chicago and Southern Railroad Company at grade, at a point immediately north and west of the point where such track is now crossed by the tracks of the Chicago and Western Indiana Railroad Company at Burnham, Cook county, Illinois, the right of way for such crossing being first obtained as provided by law; that such crossing be constructed at the sole expense of the petitioner and be protected by a proper and adequate interlocking device to be installed and maintained at the expense of the Kensington and Eastern Railroad Company. Permission is granted the parties in interest to enlarge and extend the present interlocking plant located at said crossing so as to include the tracks of the petitioner, should they so desire, in which event the petitioner is directed to prepare and present to this commission without unnecessary delay, complete and detailed plans and specifications of the additions to such interlocking plant, for the approval of this commission, and in case the parties fail to agree upon a division of the expense of operating such interlocking plant at said crossing such question will be determined by the commission upon the presentation of such plans and specifications for approval. This cause will be taken under advisement and a final order entered, upon presentation of plans and specifications for such interlocking plant and the approval of the same.

Dated this 30th day of October, A. D. 1907.

(Signed) W. H. Boys, *Chairman.*
B. A. Eckhart, *Commissioner.*
J. A. Willoughby, *Commissioner.*

Applegate & Lewis Coal Company,
vs.
Chicago, Burlington & Quincy Ry. Co.

Complaint of Discrimination in the Distribution of Cars for Loading Coal.

Petition filed July 26, 1907.
Case disposed of by agreement and dismissed.

M. D. Harmon, Norris City, Ill.,
vs.
Cleveland, Cincinnati, Chicago & St. Louis Ry. Co.

Complaint of Lack of Depot Facilities at Norris City.

Petition filed July 27, 1907.
Sept. 3, 1907, case called for hearing and no one appearing for petitioner case was dismissed.

The Chicago Southern Railway Co.

Application for approval of interlocking devices installed at crossings of the Milford and Freeland, and Rossville and Judyville branches of the Chicago and Eastern Illinois R. R. Co.

August 6, 1907, order of the commission filed of record as follows:

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

In re application of the Chicago Southern Railway Company for approval of plans for interlocking devices at crossings of branch lines of the Chicago & Eastern Illinois Railroad Company known as the Milford & Freeland branch and the Rossville & Judyville branch.

This cause coming on to be heard at the regular session of the Board of Railroad and Warehouse Commissioners of the State of Illinois at its August meeting in the city of Springfield, on the 6th day of August, A. D. 1907, and it appearing that two written agreements for grade crossings, properly protected by interlocking device, was entered into between said companies on the 27th day of March, 1905, and that petitioner prepared plans for such interlocking device with the approval of the respondent, but through an oversight the said plans had not been approved by the engineer of the commission, and it further appearing that the respondent had been served with a copy of said petition and has filed its answer in writing waiving any further notice of a hearing on said petition and consenting that the plans which have heretofore been submitted to it may now be approved by the commission, and it appearing to the commission that the said agreements for grade crossings, protected by an interlocking device, were made and entered into in good faith between the petitioner and respondent, and that the said plans if presented within six months from the date of said agreements would have been approved by the commission, it is therefore ordered that the agreements between the two companies and the plans for said interlocker, be and they are hereby approved and the engineer of the commission be and is hereby directed to approve the same for the commission.

(Signed) W. H. BOYS, *Chairman.*

The Chicago Southern Ry. Co.

Application for Approval of Interlocking Devices Installed at Crossing of the Toledo, Peoria and Western Ry. Co.

August 6, 1907. Order of the commission filed of record as follows:

BEFORE THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF ILLINOIS.

In re application of the Chicago Southern Railway Company for approval of plans for interlocker at Toledo, Peoria & Western Railway crossing.

This cause coming on to be heard at the regular session of the Board of Railroad and Warehouse Commissioners of the State of Illinois at its August meeting in the city of Springfield, on the 6th day of August, A. D. 1907, and it appearing that a contract for a grade crossing, properly protected by an

interlocking device was entered into between said companies on the 25th day of August, 1905, and that petitioner prepared plans for such interlocking device with the approval of the respondent, but through an oversight the said plans had not been approved by the engineer of the commission, and it further appearing that the respondent has been served with a copy of said petition and has filed its answer in writing waiving any further notice of a hearing on said petition and consenting that the plans which have heretofore been submitted to it may now be approved by the commission, and it appearing to the commission that the said contract for a grade crossing, protected by an interlocking device, was made and entered into in good faith between the petitioner and respondent, and that the said plans if presented within six months from the date of said contract would have been approved by the commission, it is therefore ordered that the contract between the two companies and the plans for the said interlocker, be and they are hereby approved and the engineer of the commission be and is hereby directed to approve the same for the commission.

(Signed) W. H. Boys. *Chairman.*

In the matter of the petition
of
The Illinois Central R. R. Co.
Baltimore and Ohio Southwestern R. R. Co., and the
Southern Railway Co. at the meeting of the commissioners held August 8, 1907.

Opinion of the commission in the matter of their jurisdiction over switching, as delivered by the chairman at the meeting in Chicago, August 8, 1907:

Our understandng is that whatever power the commission has is conferred by this section of the statute, section 8 of the Extortion Act, which reads in part as follows:

"The Railroad and Warehouse Commissioners are hereby directed to make, for each of the railroad corporations doing business in this State, as soon as practicable, a schedule of reasonable maximum rates of charges, for the transportation of passengers and freights, and cars of each of said railroads" and then the section authorizes such changes to be made from time to time as may be necessary.

Our idea is that that section confers power on the commission to fix maximum rates for the transportation of cars, and the transportation of cars means any movement of cars from one point to another; whether it is one hundred miles, or whether it is one hundred feet, it is a movement just the same; and consequently if our interpretation is correct that gives us complete power to fix maximum charges in all movements of cars. That would include what we generally understand to be switching cars from one point to another within switching limits, or within a town, or short distances; and if we are correct in that conclusion, then necessarily we have a right to define the particular service that we are fixing a maximum charge for. It seems to us to be immaterial what we call it. If we define a particular service and say the maximum charge for that service shall be so much; another service, we define it, give it a name, and the name is not material, and say the maximum charge for that service shall be so much.

Now, if we are correct in that, we dispose of the two first questions submitted. The first one is as to the power of the Railroad and Warehouse Commission to define what constitutes switching, and second the power of the Railroad and Warehouse Commission to fix and define the switching limits. If we have the power to fix the maximum charge for switching, as we understand the term generally, we undoubtedly have the power to say that for a switch of three miles the maximum charge shall be so and so and for five miles it may be a greater amount.

The third question submitted is as to the power of the Railroad and Warehouse Commission to establish joint rates for switching. It is claimed by Mr. Mayer in his brief that we have the power to establish joint rates; that is denied by the representatives of the railroad companies. No authorities have been cited on either side and we have not had time to make the investigation on that point that we desire to make, and do not not care at this time to express any opinion. In the reply brief filed by Mr. Mayer he takes the position, as we understand him, that the commission has the right to compel a railroad company to absorb switching charges, that is to say, that freight may be delivered to one railroad in Chicago to be delivered to another and be transported by the latter road, and that we have a right to say that the first road must either look to the road making the haul for its compensation, or do the work without compensation. We do not think that is right. We do not think we have that power. A drayman, under the decisions, is a common carrier as well as a railroad. One might as well call a drayman to his store to get a box and take it to the C., B. & Q. Ry. and collect the charges from the C., B. & Q. Ry. It seems to us that is so, but on the general question submitted as to the right to fix the maximum switching charges, which is not disputed, the right to define the service which we intend to cover by that, we think we have that power, and that being true I presume it will be necessary to fix a time to hear evidence as to what the rule shall be and the rates to be fixed.

Chicago, Wilmington and Vermilion Coal Co.

vs.

St. Louis and Springfield Ry. Co.

Petition to Cross at Grade near the County Line of Sangamon and Macoupin Counties.

Petition filed August 9, 1907.

Sept. 3, 1907, place of proposed crossing viewed by the commission.

Oct. 22, 1907, the order of the commission in this case was filed of record as follows:

Before the Railroad and Warehouse Commission of the State of Illinois.

Chicago, Wilmington and Vermilion Coal Company.

vs.

St. Louis & Springfield Railway Company.

It appears from the petition filed in this case that the petitioner is about to construct a switch track from its coal mine located in or near the village of Thayer, to a point of connection with the Chicago, Burlington & Quincy Railroad Company, some two or three miles distant, and in so doing it will be necessary to cross the main line of respondent's road. It further appears that petitioner's switch track is to be used only for the purpose of switching coal from petitioner's mine to the C., B. & Q. R. R., and that so far as it is concerned, the movements over the proposed crossing will probably not exceed an average of four per day.

It further appears that on the 12th day of September, A. D. 1907, petitioner and respondent entered into a certain contract relative to the proposed crossing, wherein it is agreed among other things, that the petitioner may cross with its proposed switch track, the main track of respondent, at grade, at a point particularly described therein, and that petitioner shall install and maintain at said crossing a certain interlocking device therein described.

And it appearing to the commission that a grade crossing at the point mentioned, if properly interlocked, as provided in said contract, will provide adequate protection to life and property.

It is therefore ordered and decided that petitioner be and it is hereby granted the right to cross with its proposed switch track the main track of the

respondent at grade, at the point particularly described in the contract above referred to, a copy of which is hereto attached and made a part of this order.

It is further ordered and decided that petitioner shall at its own expense install and maintain at said crossing an interlocking device, substantially as is provided for in said contract, and it is further ordered and decided that the said contract hereinbefore referred to be and the same is hereby approved.

Dated this 22nd day of October, A. D. 1907.

W. H. Boys, *Chairman.*
B. A. Eckhart, *Commissioner.*
J. A. Willoughby, *Commissioner.*

Joliet and Southern Traction Company

vs.

Chicago and Alton R. R. Co.
Atchison, Topeka and Santa Fé Ry. Co.
Chicago, Lake Shore and Eastern Ry. Co.
and Elgin, Joliet and Eastern Ry. Co.

Petition for a Crossing at Grade in Jackson Street in the City of Joliet, Ill.

Petition filed August 21, 1907.

August 27, 1907, place of proposed crossing viewed by commission.

September 5, 1907, commission granted permission to all parties to file briefs.

December 4, 1907, order of the commission filed of record as follows:

Before the Railroad and Warehouse Commission of the State of Illinois.

Joliet and Southern Traction Company,

vs.

The Chicago and Alton Railroad Company,
Atchison, Topeka and Santa Fé Railway Company,
The Chicago, Lake Shore and Eastern Railway Company,
and the Elgin, Joliet and Eastern Railway Company.

Petition for a Grade Crossing.

APPEARANCES:

For Petitioner, J. K. Newhall, John M. Raymond.
For Chicago & Alton Railroad Company, James Miles.
For Chicago, Lake Shore and Eastern R. R. Co., and Elgin, Joliet and Eastern Ry. Co., R. W. Campbell.

The petitioner in this case is a railroad corporation organized under the laws of the State of Illinois relating to the incorporation of railroad companies, and is authorized by its charter to construct and operate a railroad from the city of Joliet, in Will county, in a southwesterly direction through the counties of Grundy, Will and Livingston to the city of Dwight, in Livingston county. The road is to be operated by electricity.

On the 23rd day of April, A. D. 1906, the city council of the city of Joliet duly passed its ordinance number 2233 authorizing the petitioner to construct, maintain and operate its railroad on and over certain streets in the city of Joliet and particularly on and over Jackson street, in said city, from the intersection of such street with Chicago street, easterly to the eastern corporate limits of the city. In constructing its line on Jackson street it will be necessary for the petitioner to cross the tracks of all of the respondents.

The Chicago and Alton Railroad Company's tracks enter the city of Joliet at a point on the southern city limits, and run thence directly north through the city. The tracks of the Atchison, Topeka and Santa Fé Railway Company are adjacent to and parallel with the tracks of the Chicago and Alton Railroad Company. North of Jefferson street the tracks of the Chicago, Lake Shore and Eastern Railway Company and the Elgin, Joliet and Eastern Railway Company run north parallel with the tracks of the Chicago and Alton Railroad Company and the Atchison, Topeka and Santa Fé Railway Company, to a point north of Jackson street.

On the 23rd day of January, A. D. 1906, the city council of the city of Joliet passed an ordinance requiring all of the respondents to elevate their tracks through certain portions of the city, and this ordinance and the provisions thereof, were duly accepted by the respondents. By the provisions of this ordinance the track elevation commences on the south line of Ohio street and with a gradually ascending grade of five-tenths of one per cent crosses Jackson, Benton, Webster, Cass, Clinton, Van Buren and Jefferson streets. At Jackson street the elevation will be about four feet above the present grade of the street. Benton and Webster streets are, by the provisions of the ordinance, vacated at the point where they are crossed by the track elevation. A subway is provided for at Cass and at Clinton streets. Van Buren street is vacated and a subway is provided for at Jefferson street. South of Jefferson street three subways are provided for.

The railroad tracks of respondents are laid through the center of the city, that is to say, the population east of the tracks is about equal to that west of the tracks. Aside from these six subways so provided for by the ordinance, all other intervening streets, or the portion thereof which will be occupied by the enbankments, are vacated. Street railway tracks are now laid and being used on all of the streets where subways are provided, except on Clinton street, and this street is used very extensively by wagons and other vehicles, and because of the fact that this is the only street where a subway is provided which is not occupied by street railway tracks, the officials of the city of Joliet and the people owning frontage on the street, decline to give their consent to petitioner to construct and operate its line on this street.

The petitioner's line enters the city of Joliet from the northwest and runs thence in a southerly direction to Jackson street, and thence east on Jackson street to the city limits and to require it to cross the tracks of the respondents at any point south of Jackson street would have the effect of lengthening its line, which it desires, of course, to avoid. The Atchison, Topeka and Santa Fé Railway Company has at the present time four tracks crossing Jackson street.

Immediately east of these tracks the Chicago and Alton Railroad Company have six tracks crossing Jackson street. Immediately east of and adjoining the tracks of the Chicago and Alton Railroad Company, are two tracks owned by the Chicago, Lake Shore and Eastern Railroad Company and one track owned by the Elgin, Joliet and Eastern Railway Company, making a total of thirteen tracks.

After the passage of the track elevation ordinance referred to, the city council of the city of Joliet passed another ordinance authorizing the Atchison, Topeka and Santa Fé Railway Company to elevate its two main tracks over Jackson street and required it to construct a subway under such tracks. The elevation of these tracks has been completed and a subway constructed, the entrance to said subway from the east on Jackson street being about seventy feet west of the west track owned by said company, and which is at grade.

Under these conditions it is the contention of the petitioner that it is impossible for it to construct an overhead crossing because the two tracks which have been elevated by the Atchison, Topeka and Santa Fé Railway Company would interfere with such a plan. The evidence in the case shows that if the petitioner is required to construct a subway at this point that such subway can not be naturally drained because the bottom of the same would

be below any and all of the sewers which have been constructed in that part of the city, and that therefore such subway would have to be drained by artificial means, which is not only quite expensive, but is very unsatisfactory.

We are thoroughly satisfied that the petitioner has been very diligent in attempting to avoid a grade crossing at the point mentioned, and perhaps because of this fact the city council of the city of Joliet, on August 26, 1907, duly passed a resolution, which is as follows:

"*Be it resolved by the city council of Joliet, Illinois.* That the plans for the crossing of the railroad tracks on the Chicago and Alton Railroad, the Atchison, Topeka and Santa Fé Railroad, the Chicago, Lake Shore and Eastern Railway and the Elgin, Joliet and Eastern Railway on Jackson street, near Michigan street, as submitted by the Joliet and Southern Traction Company, be and the same are hereby authorized to cross at grade the present surface tracks of said railroads, and that said work shall be done subject to the approval of the committee on streets and alleys and the city engineer."

In view of the difficulties in the way of the petitioner crossing the tracks of the respondents, its evident good faith in the matter, and the attitude of the officials of the city of Joliet, we would be very loath to refuse a grade crossing to the petitioner, unless to grant such permission could be construed as an act of gross, if not criminal negligence on the part of the commission.

The evidence in this case shows that the Chicago and Alton Railroad Company have about eighty-two (82) train movements per day across Jackson street; that the Chicago, Lake Shore and Eastern Railway Company have about ten (10) movements per day and the Elgin, Joliet and Eastern Railway Company the same number. The Atchison, Topeka and Santa Fé Railway Company was not represented at the hearing and no evidence was introduced showing the number of trains operated by it, but inasmuch as this is its main line on which it operates practically as many trains as the Chicago and Alton Railroad Company, we are perhaps safe in saying that it has at least fifty (50) train movements over this crossing per day. The evidence also shows that the petitioner will operate a car over this crossing every ten minutes, and if cars are operated from 6:00 a. m. until 10:00 p. m. there would be approximately ninety (90) cars run over the crossing during each day, making the total number of movements approximately two hundred and fifty (250) per day. As we view it these facts alone furnish a sufficient reason for refusing permission to construct a grade crossing at this point, but there are other difficulties in the way. If a grade crossing was permitted cars approaching from the west would be entirely cut off from any view of trains on the respondents' lines by the elevated tracks of the Atchison, Topeka and Sant Fé Railway Company until they were within a very few feet of the crossing. The tracks of the respondents across this street when the track elevation is completed, will be laid upon a grade of five-tenths of one per cent and trains approching the crossing from the north will probably be operated at a higher rate of speed, because of this grade, than would otherwise be necessary, while trains approaching the crossing from the south would be on a descending grade and consequently not under as perfect control as if the tracks were level. The evidence also shows that the Chicago and Alton Railroad Company and the Atchison, Topeka and Santa Fé Railway Company operate a large number of through passenger trains and that such trains are operated over this crossing at an average rate of speed of thirty miles per hour. All of these things combine to make the crossing a very dangerous one. We do not think counsel for the respondents exaggerate in the least when they say in their brief, "if a death trap were deliberately planned, human ingenuity would have trouble in contriving a worse one."

We are not unmindful of the fact that to permit petitioner to cross these tracks at Jefferson street would better serve the convenience of that portion of the citizens of Joliet who will patronize the line, nor of the fact that to require the petitioner to construct a subway at this point will mean the expenditure of a considerable sum of money, but we are not willing to balance that expenditure against loss of life or limb.

In the evidence presented at the hearing we are unable to find a single fact that would justify us in entering an order in this case permitting the petitioner to cross at grade.

When a question of this character is presented to the commission its first and most important duty is to see to it that the lives of the traveling public and of the employés of the parties interested are properly protected.

In a case recently decided by the Supreme Court of Pennsylvania (Pennsylvania Railroad Company vs. Waterloo Street Railway Company, 188 Pa. St., 79) the Court said:

"What a century ago were deemed unsurmountable obstacles to an under or over crossing are now treated as only engineering difficulties, which skill and capital can generally overcome. * * * It is not as if the result of a collision were the injury to, or even the destruction of property, which compared with rapid and cheap travel and transit might perhaps be trivial but it is the dangers to the persons of the public which is to be avoided. Safety is the object in view, and therefore on determining what is reasonable we must not balance expense and difficulty against loss of life or limb."

In another case (*Chester Traction Company* vs. *Railroad Company*, 188 Pa. St., 105) the Court said:

"But one conclusion can reasonably be formed from these undisputed facts; a grade crossing is highly dangerous to the traveling public on both roads. All precautions taken to avoid danger serve only to lessen it. The millions of passengers on the two roads are at the risk of the few railroad servants who have charge of them; recklessness, negligence, inattention or dullness on the part of the servants will still endanger life and limb of the passengers.

"While we are writing this opinion the news of the Cohoes accident where the steam road was crossed at grade by the electric, has come to us. Every passenger in the electric car goes into one or the other of the two classes of sixteen killed and seventeen injured. The servants of each system attribute the accident to the negligence of those of the other.

"Increasing the number of crossings only increases the danger by increasing the chances for collisions."

On the question of the expense in separating grades the Court in this same case said:

"But the financial inability of the company is not a test to determine whether an improvement to carry safely three millions of passengers is reasonable and practicable; otherwise the poorer the company the more unlimited its right to interfere with the exercise by the older company of its franchises and the more freely can it discharge the safety of the traveling public. * * * Grade crossings are not to be established to promote the mere convenience of the railroad seeking to cross. * * * Admit that a collision would cost one or the other of the companies, or both, a heavy sum. That would mean a loss of dividends to the company and a loss of life or limb to the traveling public; the risks are not equal and humanity shrinks from off-setting the one against the other."

Our views are in harmony with the views expressed by the Court in these opinions.

It is therefore ordered that the petitioner, the Joliet and Southern Traction Company, be and it is hereby authorized to cross the tracks of the Chicago and Alton Railroad Company, the Atchison, Topeka and Santa Fé Railway Company, the Chicago, Lake Shore and Eastern Railway Company and the Elgin, Joliet and Eastern Railway Company on Jackson street, in the city of Joliet, Will county, Illinois, by means of a subway, to be constructed by the petitioner under the several tracks of the railroad companies named.

It is further ordered and decided that the Chicago and Alton Railroad Company, the Atchison, Topeka and Santa Fé Railway Company, the Chicago, Lake Shore and Eastern Railway Company and the Elgin, Joliet and Eastern Railway Company shall, if practicable, at the same time such subway is constructed by the petitioner, elevate their several tracks across Jackson street so as to conform to the grade provided for in the ordinance of the city of Joliet requiring the elevation of such tracks.

It is further ordered and decided that the cost of separating the grades at the point named shall be borne and paid by the railroad companies interested, in the following proportion, to-wit: Two-thirds of the expense of separating such grades shall be paid by the petitioner and one-third of the expense of separating such grades shall be paid by the respondents.

It is further ordered and decided that should the petitioner at any time before the construction of said subway find a more feasible and practicable place to effect such crossing, that then and in such case the same may be presented to this commission for its consideration by means of a supplemental petition.

Dated this 4th day of December, A. D. 1907.

(Signed) W. H. Boys, *Chairman.*
B. A. Eckhart, *Commissioner.*
J. A. Willoughby, *Commissioner.*

Mississippi Valley Electric Ry. Co.

vs.

The Wabash R. R. Co.
and the The Toledo, Peoria and Western Ry. Co.

Petition for Grade Crossings near Carthage, Ill., and Elvaston, Ill.

Petition filed September 20, 1907.
September 25, 1907, place of proposed crossings viewed by commission.
October 17, 1907, petitioner granted leave to file amended petition.
October 23, 1907, amended petition filed making the Chicago, Burlington and Quincy R. R. Co. an additional party respondent.
November 5, 1907, case continued without date at the request of the petitioner.
Case still pending.

F. H. Robertson, Essex, Ill.,

vs.

Cleveland, Cincinnati, Chicago and St. Louis Ry. Co.

Complaint of Insufficient Passenger Service on the Kankakee and Seneca Division of the C., C., C. & St. L. Ry. Co.

Petition filed October 22, 1907.
December 5, 1907, case heard before the commission.
January 25, 1908, order of the commission filed of record as follows:

Before the Railroad and Warehouse Commission of Illinois.

F. H. Robertson,

vs.

Cleveland, Cincinnati, Chicago and St. Louis Railway Co.

Inadequate Passenger Service.

APPEARANCES:

For Petitioner, Mr. J. W. Rausch.
For Respondent, Mr. George B. Gillespie.

The complaint in this case, which is accompanied by a petition signed by more than three hundred residents of the villages along the line of the road, is based upon the fact that the respondent does not operate any passenger trains upon the so-called Kankakee and Seneca branch of its road.

The facts appear to be as follows: The Kankakee and Seneca Railway Company is a corporation duly organized under the general laws of this State and owns a line of railroad 42.5 miles in length, extending from Kankakee,

Illinois, to Seneca, Illinois. The capital stock of this company is $10,000.00, one-half of which is owned by the respondent and the other half is owned by the Chicago, Rock Island and Pacific Railroad Company. By an arrangement between the Rock Island Company and the respondent, the exact terms of which do not appear from the evidence, the respondent is now, and for a number of years last past has been, operating the road. A passenger train was operated over the line for a time, but was discontinued some ten or twelve years ago, since which time only freight or mixed trains have been operated.

Of the cities and villages through which the road runs, Kankakee has a population of 20,000 or more; Bonfield, 250; Essex, 500; South Willmington, 4,000; Gardner, 1,500; Mazon, 800; Wauponsee, 150; Lanham, 50; Seneca, 1,350, and the country through which it passes is a well settled farming country. The time-card offered in evidence shows that four third-class trains are at the present time run over the road daily, Sundays excepted. Train No. 237 is scheduled to leave Kankakee at 6:45 a. m. and is due at Seneca at 10:45 a. m., the scheduled rate of speed being about ten and one-half miles per hour. Returning this train leaves Seneca as No. 234, at 12:01 p. m. and is due to arrive at Kankakee at 3:50 p. m., the scheduled rate of speed being about eleven miles per hour. Train No. 216 leaves Seneca at 7:15 a. m. and is due to arrive at Kankakee at 10:00 a. m. Returning this train leaves Kankakee as No. 215 at 4:05 p. m. and is due to arrive at Seneca at 6:45 p. m., the scheduled running time of the last two trains being about sixteen miles per hour.

Each of these trains carry freight, express, baggage, mail and passengers, and for the accommodation of passengers a combination car and passenger coach are attached to each train. The Kankakee and Seneca Railway connects with the Chicago, Rock Island and Pacific Railway Company at Seneca; crosses the main line of the Atchison, Topeka and Santa Fé Railroad Company at Mazon; the main line of the Chicago and Alton Railroad Company at Gardner; the Elgin, Joliet and Eastern Railroad Company at Coster; the main line of the Wabash Railroad Company at Essex, and connects with the main line of the respondents' road, the Chicago, Indiana and Southern Railroad Company, and the Illinois Central Railroad Company at Kankakee. At each of these points there is an interchange of business with connecting lines, and as the switching at all intermediate points is performed by the regular train crews, the result is that these trains are very frequently behind time, and the service, so far as passengers are concerned, is very unsatisfactory.

The evidence on the part of the petitioner tends to show that the passenger coaches used on these trains are old and dirty, and neither comfortably heated nor adequately lighted; that the trains are frequently late, thus causing passengers to miss connections at connecting points, and because of this fact ninety-five per cent of the passengers from South Willmington and Gardner and that immediate vicinity going to Morris, the county seat of Grundy county, take the Alton road to Joliet and the Rock Island road from that point to Morris, traveling a distance of fifty miles rather than take the chances of missing the Rock Island connection at Seneca, although the distance is only about twenty-eight miles. The clerk of the Grundy county circuit court testified that it was the uniform practice to allow jurors and witnesses 100 miles mileage via Joliet, notwithstanding the fact that it was only a little more than half that distance via Seneca, and this, because of the uncertainty of the trains on the respondent's road.

Passengers from these points to Morris would naturally take respondent's train No. 237, which is due to arrive at Seneca at 10:45 a. m. A northbound train on the Rock Island is due at Seneca at 10:48 a. m., and should this connection be missed the next train on which passengers for Morris could take passage is due at Seneca at 4:54 p. m.

Respondent offered in evidence copies of the train sheets showing the time of arrival of the several trains operated on this branch covering a period of about 21 months. These train sheets show the following facts: Out of a total of 559 days train No. 216 arrived at Kankakee on time 455 times and

was from 10 minutes to two hours and thirty minutes late 104 times; No. 234 arrived at Kankakee on time 496 times and was from 10 minutes to four hours late sixty-three times; No. 215 arrived at Seneca on time 486 times and was from ten minutes to three hours late seventy-three times; No. 237 arrived at Seneca on time 492 times and was from ten minutes to three hours and thirty minutes late sixty-seven times. The evidence on the part of the petitioner tended to show that at intermediate stations these trains were almost invariably late. This evidence is, however, not inconsistent with the train sheet records, because of the fact that the scheduled rate of speed is so slow that a train might be an hour late at Gardner and still arrive at the terminus on time.

But independently of the evidence on this point, it seems to us that the facilities furnished by the respondent are wholly inadequate to the needs of the communities through which this road runs, and this being so, is it not the legal duty of the respondent to operate a separate passenger train over this branch line?

We think the Supreme Court in the case of *The People ex rel.* vs. *St. Louis, Alton and Terre Haute Railroad Company*, 176 Ill., 512, has answered this question in the affirmative. That was a petition for a writ of mandamus to compel the respondent to furnish, place, run and operate "on said railroad extending from Eldorado to DuQuoin a daily (Sundays excepted) passenger train, each way, suitable and sufficient to carry all passengers, with their necessary baggage, in comfortable and reasonable security, and at a reasonable speed, and to operate said line of railroad from East St. Louis to Eldorado as a continuous line. * * *" The evidence in the case showed that the only train operated over the whole length of the branch was a mixed train consisting of coal, stock and freight cars, to which was attached a combination car and passenger coach; that it was a slow train, often being behind its schedule time from twenty minutes to three hours, and certain other facts not necessary to here state.

It was claimed in behalf of respondent that while it was obliged to furnish cars for the carriage of passengers, yet it was not necessarily obliged to carry passengers upon a separate passenger train, and that it had the right to exercise its own discretion as to the manner of their transportation.

The Court said (p. 519):

"The question is not whether appellee should run more than one train, but the question, is, whether is does all that it is required to do when it runs a passenger coach attached to a freight train; or whether it is its duty to run one or more passenger coaches, separate and disconnected from freight cars, for the accommodation of passengers only and not of passengers in connection with shippers."

After discussing certain questions in the case, the Court said (p. 524):

"* * * the right of the people to insist upon the running of a separate passenger train is implied from the charter obligations to equip and operate the road. Inasmuch as a railroad company is bound to carry both passengers and freight the obligation of the appellee required it to furnish all necessary rolling stock and equipment for the suitable and proper operation of the railroad as a carrier of passengers, no less than as a carrier of freight. It can not be said that the carriage of passengers in a car attached to a freight train is a suitable and proper operation of a railroad, so far as the carriage of passengers is concerned. The transportation of passengers on a freight train, or on a mixed train, is subordinate to the transportation of freight, a mere incident to the business of carrying freight. To furnish such cars as are necessary for the suitable and proper carriage of passengers involves the necessity of adopting that mode of carrying passengers which is best adapted to secure their safety and convenience. This can be accomplished better by operating a separate passenger train than by operating a mixed train. *That is to say, the duty of furnishing all necessary rolling stock and equipment for the suitable and proper operation of a railroad carrying passengers involves and implies the duty of furnishing a train which shall be run for the purpose of transporting passengers only, and not freight and passengers together.*"

Again the Court said (p. 526):

"It follows, that when the only train operated by a railroad company is a mixed train, passengers being unable to ride upon any other kind of train, are forced to incur risks and submit to inconveniences, which do not exist on a separate passenger train. Hence, the operation of a railroad with a mixed train only is inconsistent with the duty of furnishing such cars and locomotives as are necessary to the suitable and proper operation of the railroad when engaged in the passenger traffic. We are not unmindful of the fact that, within certain limits, a discretion may be exercised as to what rolling stock and equipment are necessary for the suitable and proper operation of a railroad carrying passengers. When the mode of carrying passengers is separate from the mode of carrying freight *the legitimate exercise of discretion may begin.* What we hold is, that there can not be suitable and proper operation of the railroad as a carrier of passengers, when the car in which it carries its passengers, is part of a freight train, because freight trains are inferior to passenger trains, and travel in them is attended with less comfort, convenience and safety than travel in passenger trains. The inferiority of a freight train to a passenger train as a mode of carrying passengers is so obvious that no man of ordinary understanding would regard the use of a freight train for the purpose of hauling a passenger car, as a suitable and proper operation of a railroad in the matter of transporting passengers."

If we correctly understand the holding of the court in this case it is then the legal duty of the respondent, under the circumstances disclosed by the evidence in the case under consideration, to operate at least one separate passenger train in each direction over its line daily, unless it is to be excused from this duty by certain facts which we will now consider.

It is contended by the respondent:

(1) That the Kankakee and Seneca Railway is operated by it, not in connection with its other lines, but as a separate and independent enterprise.

(2) That the revenue derived from the operation of this branch is not sufficient to pay the operating expenses of the road and its fixed charges, and

(3) That this commission has no power or jurisdiction to enter an order which will be binding upon the respondent.

It is perhaps true, as claimed, that a separate account is kept by the respondent showing the income and operating expenses of the Kankakee and Seneca branch, but the fact is also shown that the respondent owns one-half of the capital stock of the Kankakee and Seneca Railway, and by an arrangement with the owner of the other half of the stock, is now, and for many years past has been, operating the road. It connects with its main line at Kankakee, and we think we are justified by the evidence in holding that it is operated in connection with the main line and other branches of the respondent's railroad as one system.

Respondent offered in evidence a summary of its accounts for the year ending December 31, 1906. From this it appears that the income of the road was sufficient to pay its operating expenses and leave net earnings amounting to $1,622.55. Its fixed charges and taxes amounted to $6,750.61, leaving a deficit after paying operating expenses, fixed charges and taxes of $5,128.06. The summary of operations for the first nine months of the year 1907 is in substantial accord with the showing for the year 1906.

If the Kankakee and Seneca branch is to be considered separate and apart from the other lines operated by the respondent in the State of Illinois, we should hesitate to recommend to the respondent that it put on and operate passenger trains on this branch, but we see no reason why this branch should be considered separately and by itself. The respondent operates its main road and branches, and the Kankakee and Seneca Railway as one system, and it appears from its report, which it is required to file with the Railroad and Warehouse Commission, that its gross earnings in the State of Illinois for the year ending June 30, 1907, exclusive of the Kankakee and Seneca Railway, were $6,291,219.49, and that its net income from the operation per mile of road in the State of Illinois, after deducting the expenses of operation, was $2,943.58.

The question here raised by the respondent was considered by the court in the case above cited, and it was said (p. 530):

"If it be admitted that a railroad company is not bound to run a separate passenger train when its business is not sufficient to warrant it in doing so, we are confronted at this point with the question, whether this doctrine refers to the business done by the main road and other roads leased by it and connected with it, all of which are operated * * * as one line, or whether it can be made to refer to a small part of the continuous line or system which happens to run through a section of country, where the freight is not so much and the passengers are not so many as is the case on some other part of the line. We are of opinion that the whole business of the various parts operated as one line should be taken into consideration where the circumstances are such as are revealed by this record. The duty required of a railroad company in the matter of transporting passengers is the duty to meet and supply the public wants. These wants are measured by the business actually done, or what it could be clearly shown could be done if increased facilities were granted. That there is here a public demand for passenger service is shown by the fact that a passenger car is attached to a freight train, and that passengers are invited to ride and do ride upon this mixed train. It is not contended that appellee is not abundantly able out of the earnings realized by it, from the system controlled by it, to pay the expense of running a passenger car separately from freight cars over the Belleville and Eldorado Railroad and thereby save the traveling public from the increased danger and inconvenience of taking passage on a freight train."

Inasmuch as the Kankakee and Seneca line is operated by the respondent as a part of its system and its income from the system operated in this State is more than sufficient to enable it to pay the expense of operating a passenger train on this branch, without any appreciable effect upon the earnings of the whole line in the State considered as one system, the first and second contentions of respondent must be denied.

We quite agree with counsel for the respondent that this commission has no power to enter an order in this case and to enforce the same without the aid of the courts. The statute, however, requires this commission to examine into the condition and management and all other matters concerning the business of railroads in this State so far as the same pertains to the relation of such roads to the public and to the accommodation and security of persons doing business with such roads.

We therefore consider it our duty when called upon to examine into the merits of al complaints, such as the one filed in this case, and to make such recommendations to the railroad company complained against as may seem to be just and reasonable in the particular case.

We are of the opinion that it is the duty of the respondent in this case to furnish, run and operate a separate passenger train each way (Sundays excepted) over its railroad extending from Kankakee, Illinois, to Seneca, Illinois; that such train should be started from Kankakee at such an hour in the forenoon as will enable it to arrive at Seneca in time to make connection with the north bound train on the Chicago, Rock Island and Pacific Railroad, and that returning it should leave Seneca after the arrival of the southbound train on said Rock Island Railroad, which is due to arrive at Seneca at 3:18 p. m.

We therefore recommend that the respondent within thirty days of the date of this order caused to be placed and operated on this Kankakee and Seneca branch, in addition to the mixed trains now being operated by it on said line, a daily passenger train (Sundays excepted) suitable and sufficient to carry all passengers with their necessary baggage in comfort and security and at a reasonable speed; also that such arrangements be made by the company as will relieve train No. 216 and train No. 215 from doing switching at intermediate stations, so that passengers going east in the morning and

desiring to return in the afternoon may have reasonable and fair accommodations on such trains.

Dated this 26th day of January, A. D. 1908.

W. H. Boys, *Chairman.*
B. A. Eckhart, *Commissioner.*
J. A. Willoughby.

Carbondale Mill and Elevator Co., Carbondale, Ill.,
vs.
Illinois Central R. R. Co.

Complaint of Excessive Switching Charge at Carbondale.

Petition filed November 19, 1907.
November 29, 1907, complaint dismissed at request of petitioner.

Village of Crainville, Ill.
vs.
Illinois Central R. R. Co.

Complaint of Having no Depot Facilities at Crainville, Ill.

Petition filed November 28, 1907.
December 10, 1907, case set for hearing before the commission for date of January 7, 1908.

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